(4)

Supreme Court, U.S.
FILED

98 1812 MAY 6 - 1999

No. _____

IN THE OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1998

MIR AIMAL KASI

Petitioner,

vs.

COMMONWEALTH OF VIRGINIA

Respondent.

On Petition for a Writ or Certiorari to the

Supreme Court of Virginia

APPENDIX - VOLUME III

APPENDICES DD THROUGH NN

James Coyne King
Counsel of Record
Laurie J. Hurtt
HANIFY & KING
Professional Corporation
One Federal Street
Boston, MA 02110
(617) 423-0400
Counsel for Petitioner

Elwood Earl Sanders, Jr.
Commonwealth of Virginia
Public Defender Commission
701 East Franklin Street
Richmond, VA 23219
(804) 225-3297
Of Counsel

12788

APPENDICES --- TABLE OF CONTENTS

VOLUME III

APPENDIX DD

Transcript of hearing in Virginia Trial Court on Defendant's Motion to enforce subpoenas served to the FBI and CIA...362

APPENDIX EE

Defendant's Motion for Order to Show Cause with regard to the CIA's failure to comply with a subpoena and Affidavit in support Thereof.....386

APPENDIX FF

Defendant's Motion for Order to Show Cause with regard to the FBI's failure to comply with a subpoena and Affidavit in support Thereof.....390

APPENDIX GG

Memorandum in Support of Defendant's Motions for Order to Show Cause.....394

APPENDIX HH

CIA's Response to the Rule to Show Cause.....399

APPENDIX II

FBI's Response to the Rule to Show Cause.....414

APPENDIX JJ

Executed Bench Warrant for Petitioner.....423

APPENDIX KK

Testimony of Mirwais Kasi.....425

APPENDIX LL

Robert O'Harrow, Jr., *Suspect in CIA Slayings is Returned to U.S.*, WASHINGTON POST, June 18, 1997, at A1, A10.....468

APPENDIX MM

Thomas A. Lippman, *2 Governments Cloak Details of the Capture*, WASHINGTON POST, June 19, 1997 at A10, A11.....477

APPENDIX NN

David B. Ottaway, *Suspect's Moves, Motive Remain Mysterious: Kansi Left Life of Privilege to Move to U.S.*, WASHINGTON POST, June 19, 1997, at A12, A13.....482

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX DD

PARTIAL TRANSCRIPT

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----------x

COMMONWEALTH OF :
VIRGINIA, :
vs. : CRIMINAL NUMBER 79148
MIR AIMAL KASI :
a/k/a MIR AIMAL KANSI, :
Defendant. :

----------x

Courtroom No. 4H
Fairfax County Judicial Center
Fairfax, Virginia
Monday, October 20, 1997

The above-entitled matter came on to be heard before THE HONORABLE J. HOWE BROWN, Judge, in and for the Circuit Court of Fairfax County, Virginia, beginning at 10:00 o'clock a.m.

APPEARANCES: On Behalf of the Commonwealth:

Robert Horan, Esquire
Commonwealth Attorney

On Behalf of the Defendant:

Richard Goemann, Esquire
Frank Romano, Esquire
Crystal A. Meleen, Esquire
Judith Barger, Esquire
OFFICE OF THE PUBLIC DEFENDER

PARTIAL TRANSCRIPT

(The Court Reporter was sworn.)

THE COURT: Okay. You have motions today?

MR. GOEMANN: Yes, Your Honor. Does the Court have any preference in terms --

THE COURT: No. Just let me know what we're arguing is all.

MR. GOEMANN: Your Honor, first --

MR. HORAN: Your Honor, I wonder, if we might, in the interest of time. On some of these motions, I will stipulate to exactly what the allegations are of the defense in this case.

I will stipulate for purposes of argument on this record that the Defendant was arrested in Pakistan by an FBI agent; for purposes of this record I will concede that the FBI agent doesn't have any jurisdiction in the nation of Pakistan; that he was not taken before a judicial officer as was alleged in Ms. Meleen's motion until he returned to the United States and was presented before this Court.

That in the course of time from his arrest until he was brought to this country there was no compliance with the Vienna Convention until my letter of July 3rd,

that counsel for the defense, as is alleged in Ms. Barger's motion.

And that the seizure in Pakistan was not made pursuant to any Pakistani paper or document which would allow him to be seized under the laws of Pakistan.

Your Honor, I make that stipulation because I would suggest to the Court that on three of the four motions they are legal argument, really. I will stipulate the underlying facts of the legal argument on each of those is proper which would leave us with the fourth motion to suppress, which is Mr. Goemann's motion which deals with Miranda and voluntariness.

MR. GOEMANN: Your Honor, could I ask for a brief recess to talk with my co-counsel about these stipulations and the affect they might have on the motions we have presented today? This is the first I'm hearing about it and I'd just like a brief recess to --

THE COURT: Okay. We'll take a five minute recess.

MR. GOEMANN: Thank you.

(Brief recess.)

THE COURT: Something that occurred to me while I was out there in terms of time is I don't know whether

anybody's here from the INS, the FBI or the CIA, but --

A FEMALE VOICE: Yes, Your Honor.

THE COURT: Okay. Well, we might take that -- I don't think that will take very long. We might take that up so that person can go.

MR. GOEMANN: No objection, Your Honor.

THE COURT: You said with regard to the INS, you said -- you asked me to dismiss that, right? I don't know what counsel -- which one of you's going to --

MS. MELEEN: Mr. Romano's going to do that today.

THE COURT: Okay.

MS. MELEEN: It is true. We asked for a rule -- or to dismiss that rule.

THE COURT: Okay. So the rule against --

MR. HORAN: Your Honor, under the -- a subpoena duces tecum, that material was to be provided to the Court. That's what the subpoena duces tecum said. And it wasn't. It was provided to defense counsel, under a subpoena duces tecum, and I think it should be provided to the Court.

MR. ROMANO: Your Honor, I can deal with that. That -- the response that we got from INS was not a

response to the subpoena duces tecum. It was a response to the Freedom Information Act Request. The Freedom of Information Act Request was just complied with by the Department of Justice, Immigration Naturalization Service sent to Kara Harrison, who's an investigator in our office, who filed a Freedom of Information Act Request in response to the Freedom of Information Act, and that's what it says. It was signed by S. Foiapa, F-O-I-A-P-A, Officer, and it's in response to the Freedom of Information Act. We have yet to receive a response through the Court from the INS, the FBI or the CIA.

THE COURT: But you asked me because you got that to --

MR. ROMANO: Right.

THE COURT: -- to dismiss the INS.

MR. ROMANO: Your Honor, we're not interested in legal arguments. We were interested in obtaining the documents -- the INS through the Freedom of Information Act has provided the documents that they say they're in possession of. Therefore, there's -- a subpoena, even though it hasn't been complied with, the documents were provided under the Freedom of Information Act. They did not need to be filed with the Court; they were provided

directly to us.

THE COURT: Okay. Do you want me to hold the INS in contempt, Mr. --

MR. HORAN: No, Your Honor.

THE COURT: Okay. The INS --

MR. HORAN: I just want -- I'm not copied on anything that goes on. I have no idea what -- INS has never communicated to me.

THE COURT: They haven't communicated with me either.

MR. HORAN: As to whether they even have documents. But I understand they produced documents. It was my understanding they were producing them in accordance with the subpoena duces tecum.

THE COURT: What can you show him that says that it's not in connection with that? And do you have any objection to sharing with what you got?

MR. ROMANO: Yes, Your Honor, it's a freedom of information for us, not for the Commonwealth.

THE COURT: Okay.

MR. ROMANO: There are discovery rules --

THE COURT: I won't deal with that today, but I just wanted you to show him something so he would know

that it wasn't in connection with the subpoena.

MR. HORAN: Your Honor, what this document says at the foot of it it says as per our telephone conversation, enclosed a copy of the subject's file, the subject being Mir Aimal Kansi. This copy may not be a complete copy of his file nor is his current copy of his file. This is the only material in our possession.

THE COURT: Well, let me say this. Nothing has been filed with the Court in response to the subpoena. It was their request that I hold the INS in contempt for not complying. They want to withdraw that. It is withdrawn and what you do with it next is up to you.

So that leaves the FBI and CIA as to whom we have a response. Do you have response to their -- was there anything else you were going to say other than -- your name is?

MS. SHARON: I'm sorry. My name is Andrea Sharon. I'm from the Justice Department.

THE COURT: Okay. Was there anything else that you wanted to say other than what you've submitted in writing?

MS. SHARON: Well, unless the Court has further questions. I'll be happy to rely on our papers.

THE COURT: Okay. Did you want to respond?

MR. ROMANO: I did, Your Honor.

A subpoena duces tecum is an order of the Court to produce documents. There are in essence three ways to reply to that subpoena. One is to comply, one is to ignore it, and one is to move to quash the subpoena.

There has yet to be compliance, as Your Honor has already mentioned. There's been nothing filed by any government agency, I believe, other than Interpol, which responded virtually immediately and was the subject of an earlier motion. Interpol responded to the subpoena and I believe they did file documents with this Court, which the Court had under seal which is one of the requirements for Interpol to respond.

Interpol did respond. The Immigration of Naturalization Service is no longer a subject of this, but the CIA and the FBI responded to our initial -- our initial subpoena request on July 17th which requested compliance by July 31st in the Clerk of the Court's office with letters that say in essence, we don't have to obey your subpoenas, see these cases. Those are the cases that we cited to Your Honor that were the subject -- that were attached by Ms. Meleen to the initial request for rules to

show cause. There has never been compliance with the subpoena.

There were letters exchanged from the -- between us and the CIA. There was initially a letter on the 27th of July from the CIA. We'll deal with that one first, from Linda Siprianie, attorney advisor for the CIA. That, in essence, said, "Please be aware that a state court subpoena is not enforceable against a government agency, federal agency." And cited the cases that were cited before, starting with United States -- Toohey versus Rainey in 1951 and the cases that allegedly follow that, to bring the government outside the purview of a subpoena in this case.

In this letter they made a statement that the subpoena is not enforceable against a federal agency and they said accordingly we are undertaking no action with respect to the subpoena.

They then cite Toohey and they then ask us to submit a specific request for CIA records that complies with our Toohey regulations.

The Toohey regulations are the CFR's that govern subpoenas for federal agencies, both the Department of Justice and the CIA have their own regulations, and in

essence what the regulations say are that no government official when served with a demand for documents or testimony shall comply until it's run by an existing United States Attorney who will determine whether we're going to comply or not.

There are provisions for what happens if that compliance or the decision on whether to comply comes -- has not been made by the time the subpoena has supposed to have been replied to in the Court.

Those provisions state that what you will do, what the Federal official will do is show up in the Court and ask the Court to stay the compliance with the subpoena.

If the Court denies that stay, they're then to respectfully decline to comply with the subpoena and I believe I cited -- those are cited in the memorandum as part of the rule to show cause, but in terms of the CIA it is 32 CFR 1905.3 --

THE COURT: I think they attached that to their --

MR. ROMANO: I believe they did. And that in essence says if response to a demand is required before a decision is made an attorney from the Office of the

Attorney General shall appear before and first accord our other competent authority with a copy of this regulation and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the Court with CIA officials, and ask the Court to stay the demand.

If the Court declines to stay or rule that the demand must be complied with, the employee upon whom the demand has been made shall, if so directed by the general counsel of CIA or designee, respectfully decline to comply.

As Your Honor knows, that's not happened. No one from CIA ever appeared before this Court, before or -- at some time contemporaneous with the requirement that they comply with the subpoena to ask this Court to stay their compliance with the subpoena, or if the Court had denied that stay to say that someone has told me not to comply.

And in essence, up until this time, no one has said that. No one has said that Mr. Tenant, I believe, who's the head of the CIA has directed anyone not to comply. That's what Toohey says. In 1951 the Supreme Court said that if a government official comes before us

and says he is prohibited by his agency head in compliance with valid agency regulations from complying with the subpoena, that you cannot hold that person in contempt.

There has been yet no representation by any federal official, whether at the director's stage or any stage below that that there is a valid federal regulation that is -- CIA that prohibits compliance with the subpoena.

After this conclusory statement by Ms. Siperanie, we responded that the cases that they cite may stand for the proposition that a subpoena is not enforceable, but the proper forum for that determination of that issue is the courtroom.

It is our position that the action taken by the agency or inaction in response to the subpoena should take the form of a challenge to the subpoena in Court. The agency's assertion for immunity is not properly made in correspondence between counsel.

This is just another extension of the rule that when there is a controversy, there's not supposed to be colleague between counsel to resolve it.

Mr. Horan and I or Mr. Goemann and I or Ms. Meleen or Ms. Barger, and Mr. Horan are not supposed to

stand in Court and argue about it. They're supposed to state their positions and let Your Honor, as the arbiter, make the decision. This has yet to happen.

The CIA wrote us a conclusory statement that said, in essence, we're not going to obey your subpoena. We wrote them back in response to what they call their Toohey regulations.

There seems to be some understanding on the part of the federal agencies that these Toohey regulations are somehow a third way in which information may be chiseled out of some of these agencies.

The Toohey regulations, as we read them, are what the agencies call the Toohey regulations and they are embodied in the CFR's are means by which these agencies by which these agencies comply with subpoenas. It is not some third way to get us information.

In our response, they ask for more specific information. We wrote them back saying it is not in our interest -- our interest is in obtaining the information, not is jousting with the CIA or the FBI in hopes of getting at the Court and making a spectacle of ourselves.

There has yet -- and in response, we -- to the CIA especially, we delineated 18 specific requests, as

specific as we could get them. And the agency -- the agency required a statement of why the information was sought and what the relevance was.

With respect to the CIA, on the 12th of September, we received responses that said with respect to your 18 categories, that they're looking into two of them, they answered one of them, and with respect to the other ones they said we're not going to comply.

They have yet to come before this Court -- the CIA has yet to come before this Court and say this is the reason we are not complying to your subpoena, because the doctrine of sovereign immunity, which we gather, is the doctrine that's embodied in the cases that they cite and that we cited also in our request for a rule to show case, stand for the proposition that the government -- a federal agency is completely immune to service of process.

The cases, as we said the last time we were before Your Honor, there is no case that decides this issue in the circumstance such as this. There is no case cited by the CIA, the FBI or the INS, all of which this is a form letter, every single one of their responses cites the same cases in the same order.

There is no case that says in -- in the -- in an

ongoing criminal prosecution, where the Defendant has yet to go to trial, that sovereign immunity insulates the government from service of process.

There is no case that says as we said in our -- in our request for the rule to show cause and in support that the Defendant's right to compulsory process, the Defendant's right, 6th Amendment right to call for evidence at his behalf can be trumped by the, in essence, civil action, tort doctrine of sovereign immunity, of a common law doctrine developed to insulate the government from civil actions.

Now I suppose that in essence this -- the request for the rule to show cause is a civil action. But the underlying action with -- under which we requested the information is a criminal prosecution. None of the cases, as I said, address that.

We would respectfully interpose the Defendant's right under the 6th Amendment, the compulsory process, and to call for evidence in his behalf.

We would interpose that and we oppose that to the doctrine of the sovereign immunity which is, in essence, to free the government from being harassed by the people so that they don't have federal agency

functionaires running all over the place gathering documents.

The right not to have people running around looking for documents can easily be trumped by the Defendant's 6th Amendment right to compulsory process and to call for evidence in his behalf. And in addition, the reasons that we ask for some of this information were to support the motions that we are going to have to argue, without the right to be free from unreasonable searches and seizures, the right against self-incrimination.

All the documents that we requested, or at least some of the documents that we requested would have been instrumental in our understanding of the circumstances under which Mr. Kansi was abducted and transported and held in Pakistan. The FBI's authority for doing so, whether or not there were decisions made at the level -- higher levels of the FBI to do what Mr. Horan has already stipulated they have done, which is to act without authority to abduct a person in a foreign country.

We requested documents on whether or not there were decisions taken in the CIA or the FBI with respect to that. We don't believe that the CIA agents on the ground in Pakistan were given free reign to do whatever they

wanted to do.

All of this feeds into the unreasonableness of the seizure, the circumstances under which he was held, whether or not the United States made a conscious decision with or without the agreement and the concurrence or the collaboration of the government of Pakistan to violate Mr. Kansi's rights, whether they be rights held under this Constitution, the laws of this country, international law or Pakistani law.

The same can be said with respect to the FBI. The FBI recently in a letter responded to what they also call their Toohey regulations by sending us in essence a bunch of clippings from newspapers, which they said was -- were consistent of their file.

As Your Honor can see, we did not ask for rules to show cause against the State Department. Those subpoenas were served in the District of Columbia.

We understand that there were -- there were some grounds for saying that maybe those subpoenas jurisdictionally were not served through the out of state subpoena process as maybe they should have been done. But the CIA was served in Langly [sic], the INS was served in Arlington, I believe, and -- the FBI was served in

Arlington and the CIA -- the CIA, the INS and FBI were all served in Virginia. These are valid jurisdictionally in the Commonwealth of Virginia, yet have the CIA or the FBI to respond in Court to the subpoena.

They have not appeared and said that a valid agency regulation was the means by which their boss, the head of their agency or some designee, prohibited them from responding. And indeed what they attempted to do was respond to what they cited as our Toohey letters.

In the letters that we sent in response to their denial of the ethicacy of the subpoenas, we said we are not waiving our rights under the subpoena. In fact, Ms. Sharon and I had a conversation on the phone where in essence she said drop the subpoena and we'll try to comply with the request. That was obviously not something that we were willing to do.

Ms. Sharon then said, well, you know, you're going to lose. We've never lost one of these and our response was there's a first time for everything, and we're Public Defenders and we're used to losing so let's get into court and fight about it. That has not happened.

This is the first time we've been here. There has been no statement even in compliance with the

regulations of the CIA or FBI whether or why they have failed to comply, and we would ask you to hold them in contempt or in the alternative, order them to comply with the subpoenas.

MR. GOEMANN: Court's indulgence.

(Mr. Goemann conferred with Mr. Romano.)

MR. ROMANO: Mr. Goemann's pointed out to me that we have yet to have a response from the FBI to the subpoena, a response from the FBI was also in response to the Freedom of Information Act request.

THE COURT: Okay. Ms. Sharon?

MS. SHARON: Your Honor, under the doctrine of sovereign immunity and the Toohey doctrine, a state court does not have jurisdiction to compel a federal employee to comply with a subpoena or other request for documents obtained by the employee in the course of their official duties. Similarly in Toohey, the -- a subordinate federal officers can't be held in contempt for failing to comply with court order to produce documents when they're relying on valid promulgated regulations.

So just based on the doctrine of sovereign immunity and the Toohey doctrine, this Court does not have authority to force the government to comply with the

subpoenas or hold their particular agency officials in contempt.

Now I'd also like to point -- respond to a couple of the points made by the Defendant. First, it is our position that we have responded to the subpoenas, to the Defendant. First, with respect to the CIA. Shortly after receiving the -- within just a few days after receiving the subpoena, the CIA responded with a letter informing the Defendant that, in fact, it is the government's position that the subpoenas are jurisdictionally invalid, but also advising Defendant that he could pursue the agency regulations and seek information in that way.

In addition to providing this letter directly to Defendant, the CIA also cc'd the Court and did file a copy of the letter with the Court. So, in fact, did respond to the subpoena in that way stating its objection.

Similarly, the FBI responded to the subpoena just shortly after. Again, noting their objections that the subpoena is jurisdictionally invalid and also advising the Defendant that the Defendant can pursue the regulations should he still continue to seek the information.

Now having sent those letters out before the return date the Defendant did not respond to those letters until after the return date, in which the Defendant sent letters, Toohey letters, as I'll call them, to the CIA and to the FBI.

Upon receiving those letters I called the Defendant and we spoke and, you know, I said in light of the Toohey letters, you know, is it -- do you still want to pursue the subpoena and he said, well, what I'm interested in is the documents and I said, well, we'll see if it's necessary to quash we can go ahead and do that, but at that time, given that the Defendant was pursuing the regulations, we didn't think it was necessary to involve the Court at that moment.

Now that the Defendant is seeking to compel compliance, which is three months after return date, we're coming here on a more formal basis to give our response and note our objections that, in fact, these are jurisdictionally invalid subpoenas. We do believe we have responded, but even regardless of whether the Court deems our responses as sufficient, because of the doctrine of sovereign immunity and the Toohey doctrine, there's still no jurisdiction here to compel compliance with the

subpoenas and for those reasons, the custodian of records for each of the agencies should not be held in contempt.

I would also say one other point which is in order to leave no ambiguity to the extent that the subpoenas are left somewhat dangling, I would like to also rely on our responses to the subpoenas, officially orally move to quash the subpoenas at this time for the same -- based upon the same reasons of sovereign immunity and the Toohey doctrine.

So unless the Court has further questions --

THE COURT: Anything else, Mr. Romano? Anything else in response?

MR. ROMANO: Yes. It seems to be position of the government agencies, and Ms. Sharon repeated this, that these are jurisdictionally invalid subpoenas. That is not the case. Toohey did not say that they are jurisdictionally invalid. Just said if a Federal official responds to the Court and says that he or she in response to a valid government regulation has been prohibited from responding, that you cannot hold him in contempt. That does not go to the jurisdictionally validity of it. It goes to whether or not you can punish somebody for not complying with it.

Ms. Sharon also said that they did not think to -- they did not want to involve the Court. How else can you respond to a subpoena issued by a Court that involved the Court.

What they have done is attempt, by correspondence, to invoke sovereign immunity using as justification and as authority cases which do not decide the issue.

The reason that we responded as late as we did because in the original responses both from the FBI and the CIA they said if you will be more specific in your request we will attempt to comply under this -- what they consider hybrid Toohey regulations, which according to the regulations are their way to respond to the subpoena. We gave them a lot of time in order to respond. When they did not respond, that's when we requested the rules to show cause.

We were trying to give them the opportunity to do what they said they were attempting to do. What we got is a one page -- one and a half page response from the CIA and some Xeroxes of newspaper articles, which we were already in possession of. I don't think they've been in compliance, and I don't even -- I don't believe that Ms.

Sharon has even said today that there's a valid government regulation. They cite Toohey which says if there is one, the government official can come in here and deny it. There has yet to be a statement by the government on any -- of any agency that there's a valid government regulation by which they may take themselves out of the purview of a subpoena that was issued by this Court.

THE COURT: We can, as Judges, sometimes by cajoling and bullying and pushing get things done that we know we can't do if push comes to shove, and push has come to shove and I'm not going to do something that doesn't -- that I can't enforce any further. This needs to come to an end.

I don't find there's any jurisdiction of a state court to hold a federal official in contempt for failing to respond to a state court's subpoena. And for that, and the other reasons stated by Ms. Sharon, the rule to show cause is dismissed.

MR. ROMANO: Your Honor, would you please note our exception?

THE COURT: Yes.

MR. ROMANO: For purposes of the record.

THE COURT: Of course.

APPENDIX EE

VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

FILED

CRIMINAL

97 OCT -2 3:56

JOHN T. FREY

CLERK, CIRCUIT COURT

FAIRFAX, VA

COMMONWEALTH OF VIRGINIA

vs. CRIMINAL NO. 79148

MIR AIMAL KASI

MOTION FOR ORDER TO SHOW CAUSE

Defendant, Mir Aimal Kansi, through counsel, respectfully moves this Court for an order to be served upon the Custodian of Records for the Central Intelligence Agency, c/o CIA Headquarters, 930 Dolley Madison Blvd., McLean, Virginia, directing said Custodian to appear on October 15, 1997, at 10:00 a.m. to show cause why said Custodian should not be held in contempt for failing to respond to a subpoena duces tecum issued by this court and returnable to the Office of the Clerk of this Court on or before July 31, 1997 at 3:00 p.m.

Respectfully submitted,

MIR AIMAL KANSI

s/_____ By Counsel

Crystal A. Meleen

Senior Assistant Public Defender

4103 Chain Bridge Road, Suite 500

Fairfax, Virginia 22030

(703) 934-5600

CERTIFICATE OF SERVICE

I, Crystal A. Meleen, hereby certify that a copy of the above motion was served on this 2nd day of October, 1997 by hand delivery, to the office of Robert F. Horan, Jr., Esquire, Office of the Commonwealth's Attorney, 4100 Chain Bridge Road, Fairfax, Virginia, 22030.

s/_____

Crystal A. Meleen

Senior Assistant Public Defender

VIRGINIA
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

vs. CRIMINAL NO. 79148

MIR AIMAL KASI

AFFIDAVIT

I, Crystal A. Meleen, Counsel for Mir Aimal Kansi, state as follows:

1. That on July 17,1997, I filed with this Court, a request for a subpoena duces tecum to be served on the Custodian or Records for the Central Intelligence Agency (CIA) requesting various records material to the defense of Mr. Kansi.

2. In response, I received a letter dated July 27, 1997 requesting a detailed description of the types of information requested by the subpoena. I compiled with the requested to the best of ability by letter dated August 20, 1997.

3. On September 16,1997, I received a letter dated September 12,1997 stating the CIA's refusal to comply with the Court's subpoena. The CIA has never filed any pleadings in this Court seeking to be relieved of its obligations under this Court's subpoena.

I hereby state that the aforementioned information is true to the best of my knowledge.

s/_____
Crystal A. Meleen
Senior Assistant Public Defender

STATE OF VIRGINIA) to wit:
COUNTY OF FAIRFAX)
Subscribed and sworn before me,
this 2nd day of October, 1997

s/_____
Joseph Keefe
Notary Public

My Commission Expires:
August 31, 2001

APPENDIX FF

VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

FILED CRIMINAL
97 OCT – 2 PM 3:56
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

COMMONWEALTH OF VIRGINIA

vs. CRIMINAL NO. 79148

MIR AIMAL KASI

MOTION FOR AN ORDER TO SHOW CAUSE

Defendant, Mir Aimal Kansi, through counsel, respectfully moves this Court for an order to be served upon the Custodian of Records for the Federal Bureau of Investigation, 7799 Leesburg Pike, Falls Church, Virginia, directing said Custodian to appear on October 15, 1997, at 10:00 a.m. to show cause why said Custodian should not be held in contempt for failing to respond to a subpoena duces tecum issued by this court and returnable to the Office of the Clerk of this Court on or before July 31, 1997 at 3:00 p.m.

Respectfully submitted,
MIR AIMAL KANSI
By Counsel

s/_____

Crystal A. Meleen
Senior Assistant Public Defender
4103 Chain Bridge Road, Suite 500
Fairfax, Virginia 22030
(703) 934-5600

CERTIFICATE OF SERVICE

I, Crystal A. Meleen, hereby certify that a copy of the above motion was served on this 2nd day of October, 1997 by hand delivery, to the office of Robert F. Horan, Jr., Esquire, Office of the Commonwealth's Attorney, 4100 Chain Bridge Road, Fairfax, Virginia, 22030.

s/_____

Crystal A. Meleen

Senior Assistant Public Defender

VIRGINIA
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

vs. CRIMINAL NO. 79148

MIR AIMAL KASI

AFFIDAVIT

I, Crystal A. Meleen, Counsel for Mir Aimal Kansi, state as follows:

1. That on July 17,1997, I filed with this Court, a request for a subpoena duces tecum to be served on the Custodian or Records for the Federal Bureau of Investigation (FBI), requesting various records material to the defense of Mr. Kansi.

2. In response, I received a letter dated July 24, 1997 requesting a detailed description of the types of information requested by the subpoena. I compiled with the requested to the best of ability by letter dated September 25, 1997.

3. The FBI has not filed with the Court or provided to counsel any records in response to this Court's subpoena. The FBI has never filed any pleadings in this Court seeking to be relieved of its obligations under this Court's subpoena.

I hereby state that the aforementioned information is true to the best of my knowledge.

s/_____
Crystal A. Meleen
Senior Assistant Public Defender

STATE OF VIRGINIA)
COUNTY OF FAIRFAX) to wit:

Subscribed and sworn before me,
this 2nd day of October, 1997

s/_____
Joseph Keefe
Notary Public

My Commission Expires:
August 31, 2001

APPENDIX GG

VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

FILED
JUDICIAL SUPPORT
97 OCT 15 AM 8:06
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

COMMONWEALTH OF VIRGINIA

vs. CRIMINAL NO. 79148

MIR AIMAL KASI

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTIONS FOR ORDER TO SHOW CAUSE

On July 17, 1997, Mir Aimal Kansi, through counsel, filed requests for subpoenas duces tecum with the clerk of this court. The requested subpoenas duces tecum were issued and served on the custodians of record for the Central Intelligence Agency, 930 Dolley Madison Blvd., McLean, Virginia, the Federal Bureau of Investigation, 7799 Leesburg Pike, Falls Church, Virginia, and the Immigration and Naturalization Service, 4420 North Fairfax Drive, Arlington, Virginia.

The right of the accused in a criminal proceeding to compel witnesses and evidence is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 8 of the Virginia Constitution require that the Court enforce that guarantee:

> The right to the production of all evidence at a criminal trial similarly has

> constitutional dimensions. The Sixth Amendment explicitly confers upon every defendant in a criminal trial the right "to be confronted with the witnesses against him" and to have compulsory process for obtaining witnesses in his favor." Moreover, the fifth Amendment also guarantees that no person shall be deprived of liberty without due process of law. It is the manifest duty of the courts to vindicate those guarantees, and to accomplish that it is essential that all relevant and admissible evidence be produced.

United States v. Nixon, 418 U.S. 683, 711 (1974).

The Circuit Court's authority for issuance of subpoenas duces tecum to effectuate that constitutional right is found in Rule 3A:12 of the Rules of the Virginia Supreme Court. Section (d) of the same rule provides that "[f]ailure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court to which the subpoena served upon him may be deemed a contempt of the court to which the subpoena is returnable." The Rule, on its face, makes no exception for federal agencies or agents of such agencies. If the custodian of records for a federal agency wishes to seek release from subpoena duces tecum, he must provide the court with "adequate excuse" as required by Rule 3A:12 (d).

To date, counsel for Mr. Kansi has received no documents filed with the court indicating that any of these agencies has provided "adequate excuse" or even objects to, or moves to quash, the subpoenas duces tecum. This Court's letter of October 3, 1997,

denying counsel's request for Rules to Show Cause suggests two notions which are unsupported by the record: 1) that the subpoenaed agencies are not willing to voluntarily comply, and 2) that this issue has previously been litigated to the detriment of the accused. Moreover, the language of the letter suggests that counsel has already moved this Court to hold the agency representatives in contempt. To the contrary, Mr. Kansi's motions seek the appearance of the custodians of record for determination by this Court as to whether findings of contempt are appropriate.

Documents of each of these federal agencies are subject to subpoena as evidenced by the Code of Federal Regulations which sets forth the procedure. See 28 C.R.R. §§ 16.21 et seq. (Department of Justice regulations for production of in federal and state proceedings); 32 C.F.R. §§ 1905.1 et seq. (Central Intelligence Agency regulations for production of official records in proceedings before federal, state or local government entities).

Each agency upon receipt of a subpoena duces tecum is required to act in accordance with agency regulations. The agency cannot simply ignore the subpoena. See 28 C.F.R. §§ 16.27, 16,28; 32 C.F.R. § 1905.4.

The doctrine of sovereign immunity has been invoked in support of the proposition that a federal employee may not be compelled to obey a subpoena contrary to his employer's instruction under valid agency regulations. United States ex rel. Touhy v. Ragen , 340 U.S. 462 (1951). A variety of cases following Touhy have relied upon this doctrine to dismiss contempt proceedings against federal officials for refusing to comply with state court subpoenas. None of these cases involves a

pending criminal case at the trial stage, the posture in which this case stands.

Touhy involved a habeas corpus proceeding. Boron Oil Co. v. Downie, 873 F.2d 67 (4th Cir. 1989), involved a tort action in a state court in West Virginia. Swett v. Schenk, 792 F.2d 1447 (9th Cir. 1986), dealt with an investigator from the NTSB, called to testify as an expert in a non-criminal proceeding. Reynolds Metals Co. v. Crowther, 572 F.Supp 288 (D. Mass. 1982), was a private civil action. Environmental Enterprises, Inc. v. Environmental Protection Agency, 664 F.Supp. 585 (D.D.C. 1987) was environmental litigation. Only State of Louisiana v. Sparks, 978 F.2d 226 (5th Cir. 1992) remotely implicates a criminal case, after conviction in defendant's motion for a new trial.

All of these cases implicate sovereign immunity, a common law doctrine designed to insulate the federal government against civil actions.

None of these cases weighs the common law doctrine of sovereign immunity against the specific constitutional right of the accused in a criminal proceeding to call for evidence.

In addition, in each of these cases, proceedings were initiated by the state court, at which federal officials appeared and interposed "cause" why they should not be held in contempt. In none did the trial court sua sponte refuse to issue the rule requested, anticipating the position of the official who was the subject of the proceeding. In each, the official responded to the subpoena by declining to appear and testify in response to it because his federal employer had refused to permit it.

None of the subpoenas at issue in this case has been the subject of a motion to quash; no federal official has informed this

Court that he/she has been directed not to comply with this court's subpoena. Letters have been written to defense counsel stating that the subpoenas are not enforceable; not even the letters themselves claim that the heads of the federal agencies involved have instructed the officials to whom the subpoenas were directed, not to comply with them.

WHEREFORE, Mir Aimal Kansi respectfully moves the Court to issue the requested Rules to Show Cause.

Respectfully submitted,

MIR AIMAL KANSI

By Counsel

OFFICE OF THE PUBLIC DEFENDER

s/ By: _____

Crystal A. Meleen
Senior Assistant Public Defender
4103 Chain Bridge Road, Suite 500
Fairfax, Virginia 22030
(703) 934-5600

CERTIFICATE OF SERVICE

I, hereby certify that a copy of the foregoing memorandum was delivered on this 15th day of October, 1997, to Robert F. Horan, Jr., Commonwealth's Attorney.

s/_____

Crystal A. Meleen
Senior Assistant Public Defender

ATTACHMENTS HAVE BEEN EXCLUDED.

APPENDIX HH

VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

vs. CRIMINAL NO. 79148

MIR AIMAL KASI

RESPONSE TOTHE RULE TO SHOW CAUSE AND TO THE SUBPOENA DUCES TECUM

The Central Intelligence Agency ("CIA") hereby responds to the Court's Rule to Show Cause and the subpoena duces tecum issued by the Circuit Court of Fairfax County as follows:

1. On July 18, 1997, at the request of defendant Mir Aimal Kansi, the Circuit Court of Fairfax County issued a subpoena directed to the CIA Custodian of Records seeking all material in each agency's possession relating to the investigation and apprehension of the defendant.

2. The CIA responded to counsel for defendant directly by letter dated on July 27, 1997.[7] See attachment A. The CIA also responded to the subpoena by filing a copy of the letter with the Clerk for Circuit Court of Fairfax County on the same date.

3. The CIA has, accordingly, responded to the subpoena duces tecum issued by the Circuit Court for Fairfax

---

[7] The July 27, 1997 letter explained that the subpoena duces tecum was jurisdictionally invalid. The letter also advised defendant that, outside of the subpoena context, it would consider a proper written request for information made pursuant to the CIA's regulations governing the production of documents by federal officials in connection with state or federal proceedings. 32 C.F.R. Part 1905.

County and the CIA custodian of records should, therefore, not be held in contempt.

4. To the extent the Court deems the July 27, 1997 letter filed with the Court insufficient to respond to the subpoena for purposes of the Rule to Show Cause, the CIA Custodian of Records should not be held in contempt because under the doctrine of sovereign immunity the circuit Court of Fairfax County does not have jurisdiction to enforce subpoenas or other demands compelling the production of documents by federal officials obtained or generated in the course of their official duties. See e.g. Louisiana v. Sparks, 978 F.2d 226, 234-36 (5th Cir. 1992); Boron Oil Co. v. Downie, 873 F.2d 67, 70-71 (4th Cir. 1989); Environmental Enterprises, Inc. v. United States Environmental Protection Agency, 664 F.Supp. 585 (D.D.C. 1987). Similarly under the Touhy doctrine federal employees may not be held in contempt for complying with the agency's regulations governing the production of documents obtained or generated in the course of their official duties. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

5. For the Court's information, the defendant submitted a letter to the CIA pursuant to the aforementioned Touhy regulations on August 20, 1997. The CIA provided an interim response to the letter on September 12, 1997 and a [sic] anticipates a final response shortly.

For the foregoing reasons, the CIA has already responded to the subpoena duces tecum issued by the Circuit Court for Fairfax County and the CIA Custodian of Records should not be held in contempt.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General
Civil Division
HELEN F. FAHEY
United States Attorney

s/ _____

ANNE L. WEISMANN
ANDREA M. SHARRIN
Attorneys
U.S. Department of Justice
Civil Division
901 E Street, N.W., Room 992
Washington, D.C. 2004
(202) 616-8268
(202) 616-8202

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of October, 1997, copies of the foregoing Response to the Rule to Show Cause and Subpoena Duces Tecum, by facsimile and first class mail, on:

Crystel [sic] A.Meleen
Senior Public Public [sic] Defender
4103 Chain Bridge Road, Suite 500
Fairfax, Virginia 22030

Robert F. Horan
Office of the Commonwealth's Attorney
4110 Chain Bridge Road, Room 124
Fairfax, Virginia 22030

s/_____
Andrea M. Sharrin

CENTRAL INTELLIGENCE AGENCY

Washington, D.C. 20506

Office of the General Counsel

27 July 1997

Crystal A. Maleen

Senior Assistant Public Defender

4102 Chain Bridge Road, Suite 500

Fairfax, Virginia 22030

Re: Commonwealth v. Kansi

Case No. KO79148

Dear Ms. Maleen:

The Central Intelligence Agency is in receipt of a subpoena duces tecum dated 18 July 1997 in the above-captioned matter. Please be aware that a state court subpoena is not enforceable against a federal agency. See, e.g. Louisiana v. Sparks, 978 F.2d 226, 234-36 (5th Cir. 1992); Boron Oil Co. v. Downie, 873 F.2d 67, 70-71 (4th Cir. 1989); Environmental Enterprises, Inc. v. United States Environmental Protection Agency, 664 F.Supp. 585 (D.D.C. 1987). Accordingly, we are undertaking no action with respect to the subpoena.

The Supreme Court has upheld federal regulations con trolling the release of official information in litigation. United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). The Agency's Touhy regulation is published at 32 C.F.R. Part 1905 and a copy is enclosed for your information.

You may wish to consider a written request for CIA records that complies with our Touhy regulation. Such a request

should include a particularized statement of the specific information sought, why it is sought, and how it is relevant to the pending criminal litigation. Without waiving any of the requirements of our Touhy regulations, or the ability to assert any available privilege or rule of discovery to preclude production of CIA records, we would certainly consider any request that complies with our Touhy regulation.

If you have any further questions regarding this matter, you may contact me at (703) 874-3124.

Sincerely,

s/ Linda C. Cipriani
Attorney/Advisor

cc: John T. Frey
Clerk of the Court
Circuit Court of Fairfax County
Robert F. Horan
Commonwealth Attorney
Fairfax County

Part 1905 - PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERALSTATE OR LOCAL GOVERNMENT ENTITIES OF COMPETENT JURISDICTION

Sec.

1905.1 Scope and Purpose

1905.2 Definitions

1905.3 General

1905.4 Procedure for Production

AUTHORITY: 5 U.S.C. 403(d)(3); 50 U.S.C. 403g; United States ex rel. *Touhy v. Ragen*, 340 U.S. 462 (1951); E.O. 12333 §§1.8(i), 1.5(h), 3.2;E.O. 12356; U.S. v. Snepp, 444 U.S. 507 (1980).

SOURCE: 56 FR 41459, August 21,1991, unless otherwise noted.

§ 1905.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of (a) material contained in the files of CIA, (b) information relating to or based upon material contained in the files of CIA, and (c) information acquired by any person while such person was an employee of CIA as part of the performance of that person's official duties or because of that person's association with CIA.

§ 1905.2 Definitions.

For the purpose of this part:

(a) *CIA or Agency* means the Central Intelligence Agency and includes all staff elements of the Director of Central Intelligence.

(b) *Demand* means any subpoena, order, or other legal summons (except garnishment orders) that is issued by a federal, state or local governmental entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

(c) *Employee* means any officer, any staff, contract, or other employee of CIA; any person including independent contractors associated with or acting on behalf of CIA; and any person formerly having such a relationship with CIA.

(d) *Production or produce* means the disclosure of:

(1) Any material contained in the files of CIA; or

(2) Any information relating to material contained in the files of CIA, including but not limited to summaries of such information or material, or opinions based on such information or material;

(3) Any information acquired by persons while such persons were employees of CIA as part of the performance of their official duties or because of their official status or association with CIA;

in response to a demand upon an employee of CIA.

(e) *General Counsel* includes the Deputy General Counsel of Acting General Counsel.

§ 1905.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part applies to former employees to the extent consistent with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1905.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify the Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505 (703/874-3118;which shall follow the procedures set forth in this section.

(b) The General Counsel of CIA and Deputy Directors of Heads of Independent Offices with responsibility for the information sought in the demand, or their designees, shall determine whether any information or materials may properly be produced in response to the demand, except that the Office of General Counsel may assert any and all legal defenses and objections to the demand available to CIA prior to the start of any search for information responsive to the demand. CIA may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by CIA has been made by the entity or person that issued the demand.

(c) CIA officials shall consider the following factors, among others, in reaching a decision:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would be inconsistent with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods;

(iii) Disclosure would violate a specific CIA regulation or directive;

(iv) Disclosure would reveal classified information;

(v) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or

(vi) Disclosure would unduly interfere with the orderly conduct of CIA's functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the CIA is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit, or if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the CIA Office of General Counsel.

(e) The Office of General Counsel shall be responsible for notifying the appropriate employees and other persons of all

decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, an attorney from the Office of General Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this Regulation and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate CIA officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

(g) If the court of other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with § 1905.4(g), or rules that the demand must be complied with irrespective of instructions rendered in accordance with this part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by the General Counsel of CIA, or designee, respectfully decline to comply with the demand under the authority of *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this Regulation.

(h) With respect to any function granted to CIA officials in his part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials

(i) Any nonemployee who receives a demand for the production or disclosure of CIA information acquired because of that person's association or contacts with CIA should notify CIA's

Office of General Counsel, Litigation Division (703/874-3118) for guidance and assistance. In such cases the provisions of this regulation shall be applicable.

CENTRAL INTELLIGENCE AGENCY

Washington, D.C. 20506

Office of the General Counsel

27 July 1997

Crystal A. Maleen

Senior Assistant Public Defender

4102 Chain Bridge Road, Suite 500

Fairfax, Virginia 22030

Re: Commonwealth v. Kansi

Case No. KO79148

Dear Ms. Maleen:

The Central Intelligence Agency is in receipt of your 20 august 1997 letter requesting CIA records pursuant to 32 C.F.R. 1905 ("Touhy Regulations"). We do not wish to engage with you in a debate about the enforceability of state court subpoenas against a federal agency or shat CIA's Touhy regulations actually require. My letter to you of 27 July 1997 fully expressed our position on these matters. You should note that our decision to conduct some record searches for information responsive to your request is a voluntary one. 32 C.F.R. 1905.4.

Your letter sets out 18 categories of information you seek from this Agency, yet, as is pointed out below, you have not stated with sufficient specificity how each of those categories is relevant to a legal defense against the charges brought against your client. Moreover, some of the categories of information, specifically c, d, f, and l, are so broadly written that it is difficult to determine what

specific information you are seeking. Nevertheless, following is a response to your requests for information as best we understand them.

With regards to categories a, b, c, e, and g, these appear to be requests for information pertaining to the investigation into the 25 January 1993 shootings and the search for suspects. As these requests relate to a domestic U.S. law enforcement murder investigation, a mater not within CIA's charter, you may wish to direct these requests to the appropriate law enforcement agencies or to the Commonwealth Attorney as a discovery request pursuant to the Virginia Rules of Criminal Procedure. Nevertheless, CIA will conduct searches to locate documents responsive to your request. With specific regard to category b, we are limiting our search to any CIA records which identify someone other than your client as the alleged perpetrator of the murders. With respect to category c, we are interpreting your request to mean any tests conducted by or at the request of CIA relating to physical evidence of the murders. In agreeing to conduct searches, CIA is not agreeing to release to you any records that may be located, nor to subject itself to the jurisdiction of any non-federal court.

With regards to categories d, f, i, j, m, n, o, p, q, and r, these appear to request information collected by the Agency pertaining to your client or information pertaining to government efforts to find Kansi and bring him to the U.S. Because you have not provided sufficient explanation how this type of information, if it should exist in CIA records, is relevant to a defense to capital murder charges, we will not conduct searches for any responsive records. In denying your request on these grounds, I direct your

attention to §1905.4(c)(2) that production would not be appropriate under the applicable rules of discovery.

With respect to category h in which you request information that Kansi was in any connected to the CIA, Kansi has never had any involvement with this Agency. In sum, Kansi has never been a source or contact, whether informal or formal, of the Central Intelligence Agency.

Finally, with respect to category k in which you request any information about decisions made by CIA as to whether to violate the U.S. constitution, the laws of the United States or the provisions of any relevant treaties with respect to Mr. Kansi, we are not undertaking a search of CIA records. First, CIA is obligated to follow U.S. law when pursuing its intelligence mission. Second, with regard to your request concerning the laws of any other country or any relevant treaties, this request is overbroad, vague and without any showing of relevancy to a defense to capital murder.

I will contact you when our record searches for the remainder of your request are complete.

Sincerely,

s/ Linda C. Cipriani
Attorney-Advisor

APPENDIX II

VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

FILED

IN COURTROOM

10/20/97

s/_____

(initials)

JOHN T. FREY

CLERK OF THE CIRCUIT COURT

OF FAIRFAX COUNTY, VA

COMMONWEALTH OF VIRGINIA

vs. CRIMINAL NO. 79148

MIR AIMAL KASI

RESPONSE TO THE RULE TO SHOW CAUSE AND

TO THE SUBPOENA DUCES TECUM

The Federal Bureau of Investigation ("FBI") and the Immigration and Naturalization Service ("INS") hereby respond to the Court's Rule to Show Cause and the subpoena duces tecum issued by the Circuit Court of Fairfax County as follows:

1. On July 18, 1997, at the request of defendant Mir Aimal Kansi, the Circuit Court of Fairfax County issued subpoena directed to the FBI Custodian of Records at both the Washington Metro Field office and the Northern Virginia Resident Agency seeking all material in each agency's possession relating to the investigation and apprehension of the defendant.

2. The INS has responded to the subpoena duces tecum with all documents in its possession that were not privileged, classified or otherwise not subject to disclosure under

its regulations. Accordingly, the INS has satisfied the subpoena in full . See Attachment A.

3. The FBI responded to counsel for defendant directly by letter dated on July 25, 1997. See attachment B. The government also advised defendant that, outside of the subpoena context, it would consider a written request for information made pursuant to the FBI's regulations governing the production of documents by federal officials in connection with state or federal proceedings. See 16 C.F.R. §§ 16.21-16.29. Defendant was advised that the regulations required a written request identifying with specificity the nature of the litigation, the specific information requested, and an explanation of how the information is relevant to the litigation. See Attachment B.

4. The FBI has, accordingly, responded to the subpoena duces tecum issued by the Circuit Court for Fairfax County and the FBI custodian of records should, therefore, not be held in contempt.

5. To the extent the Court deems the aforementioned responses by the INS or FBI insufficient to respond to the subpoena for purposes of the Rule to Show Cause, the FBI Custodian of records and the INS Custodian of Records should not be held in contempt because, under the doctrine of sovereign immunity, the Circuit Court of Fairfax County does not have jurisdiction to enforce subpoenas or other demands compelling the production of documents by federal officials obtained or generated in the course of their official duties. See e.g. Louisiana v. Sparks, 978 F.2d 226, 234-36 (5th Cir. 1992); Boron Oil Co. v. Downie, 873 F.2d 67, 70-71 (4th Cir. 1989); Environmental Enterprises, Inc. v. United States Environmental Protection Agency, 664 F.Supp.

585 (D.D.C. 1987). Similarly under the Touhy doctrine federal employees may not be held in contempt for complying with the agency's regulations governing the production of documents obtained or generated in the course of their official duties. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

6. Although this Court lacks jurisdiction over this matter, for the Court's information, the defendant submitted a letter to the FBI pursuant to the aforementioned Touhy regulations on September 25,1997. The FBI is in the process of evaluating defendant's request. It also should be noted, however, that upon preliminary review it appears that most, if not all, of the material defendant requests may not be disclosed because, like the subpoenas, the categories defendant lists seek documents which are privileged, classified, would reveal investigatory records compiled for law enforcement purposes, would interfere with enforcement proceedings or disclose investigative techniques or procedures the effectiveness of which would be impaired if released, or would otherwise be inappropriate under the criminal discovery rules governing the case. See e.g., 16 C.F.R. § 16.26.

For the foregoing reasons, the INS and FBI have already responded to, and hereby further responds, to the subpoenas duces tecum issued by the Circuit Court for Fairfax County and the INS and FBI Custodians of Records should not be held in contempt.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General
Civil Division
HELEN F. FAHEY
United States Attorney

s/_____
ANNE L. WEISMANN
ANDREA M. SHARRIN
Attorneys
U.S. Department of Justice
Civil Division
901 E Street, N.W., Room 992
Washington, D.C. 2004
(202) 616-8268
(202) 616-8202

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of October, 1997, copies of the foregoing Response to the Rule to Show Cause and Subpoena Duces Tecum, by facsimile and first class mail, on:

Crystal A. Meleen
Senior Public Defender
4103 Chain Bridge Road, Suite 500
Fairfax, Virginia 22030

Robert F. Horan
Office of the Commonwealth's Attorney
4110 Chain Bridge Road, Room 124
Fairfax, Virginia 22030

s/_____
Andrea M. Sharrin

U.S. Department of Justice

Immigration and Naturalization Service

4420 North Fairfax Drive

Arlington, VA 22209

October 14, 1997

Crystal A. Meleen, Esq.
Senior Assistant Public Defender
4103 Chain Bridge Road – Suite 500
Fairfax, VA 22030

Re: Commonwealth of Virginia v. Mir Aimal Kansi
Criminal No. 79148
Fairfax Country [sic] Circuit Court

Dear Ms. Meleen:

This will acknowledge receipt of your letter dated August 15, 1997, containing a "Supplemental Affidavit", executed by you on August 19, 1997, as well as a "Release of Information", executed by Mr. Kansi on the same date. These documents are in response to my letter of July 29, 1997, to you concerning your initial request for documents pursuant to a subpoena *duces tecum.*

I note that you have also filed a Freedom of Information Act request with the Washington District Office of the Immigration and Naturalization Service. That Unit has informed me that they were unable to locate your client's official file, but were able to locate a copy of your client's file and that they have forwarded that file, in its entirety, to you. (It was noted by that Unit in their transmittal letter to you that the copy located "may not be a complete copy of

his file nor . . . [a] current copy of his file . . . ." You were also advised that they would continue to search for the file).

It appears that you have now received all documents that the Washington District Office of the Immigration Service has relating to your client. As previously advised, the District will, nonetheless, continue to search for the file. Even though the FOIA Unit has forwarded to you all documents located to date relative to your client, the United States Department of Justice, and its component agencies, does not waive any claim it might have to sovereign immunity and/or any other right or rights it might have under the supremacy clause of the United States Constitution, federal statures and/or case law.

I am sorry it took this long to reply to you, but the search for the file, as well as being on detail to South Carolina for the past two weeks, caused this delay. I also must take exception to that pat of your letter, dated October 2nd which was received by me today, in which you state that you were unable to locate a telephone number for me in order to discuss this matter. I am surprised at this comment inasmuch as the concluding sentence of said July 29th letter to you states: "[i]f you have any questions, please feel free to call the undersigned at (202) 307-1579".

Sincerely,

HELEN F. FAHEY

United States Attorney

s/ By: MARTIN H. SACHS

Special Assist. U.S. Attorney

U.S. Department of Justice

Immigration and Naturalization Service

4420 North Fairfax Drive

Arlington, VA 22209

October 14, 1997

Crystal A. Meleen, Esq.

Senior Assistant Public Defender

4103 Chain Bridge Road – Suite 500

Fairfax, VA 22030

Re: Commonwealth of Virginia v. Mir Aimal Kansi

Criminal No. 79148

Fairfax Country [sic] Circuit Court

Dear Ms. Meleen:

This letter responds to the July 17, 1997 subpoenas directed to the Federal Bureau of Investigation ("FBI"), Custodian of Records at both the Washington Metro Field Office and the Northern Virginia Resident Agency and to various components of the United States Department of State ("State Department"). The subpoenas respectively seek documents, records and other material which may be in the FBI and State Department's possession in connection with the above-captioned criminal matter.

The FBI and State Department are both committed to responding to your request for information to the extent possible. To facilitate a prompt response, it is necessary for you to make a written request to each agency pursuant to the following regulations. The FBI's regulations, contained in 28 C.F.R. §§ 16.21-16.29, require that you provide a written statement identifying with specificity, the nature of the litigation, the specific

information requested and an explanation of how the information is relevant to the litigation. The information contained in your subpoena is not sufficiently detailed to be evaluated.

Similarly, the State Department regulations, contained in 22 C.F.R. § § 172.1-172.9, also require that you to describe with particularity the nature and relevancy of the information sought. See 22 C.F.R. § 172.5.

I should also note that the Circuit Court for Fairfax County does not have jurisdiction to enforce subpoenas compelling the production of documents by federal officials obtained or generated in the course of their official duties. See, e.g., Louisiana v. Sparks, 978 F.2d 226, 234-36 (5th Cir. 1992); Boron Oil Co. v. Downie, 873 F.2d 67, 70-71 (4th Cir. 1989); Environmental Enterprises, Inc. v. United States Environmental Protection Agency, 664 F. Supp. 585 (D.D.C. 1987). For this reason, which is not exclusive, the FBI and the State Department object to the subpoena and decline to produce the documents, records or other material pursuant to it.

Please note, however, that the FBI and State Department are not objecting to your right to seek information but rather the form and specificity of the subpoenas. Thus, if you are still in receiving information, both agencies will willingly consider a proper written request which you should send directly to them.

I hope you find this information helpful. If you have any questions, I may be reached at (202) 616-8268.

Sincerely,

s/ Andrea M. Sharrin
Trial Attorney
Federal Programs Branch
Civil Division

APPENDIX JJ

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA CRIMINAL NO.: 79148

COUNTY OF FAIRFAX

RE: MIR AIMAL KANSI

To any Sheriff or Police Officer, Greeting:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, returned an indictment against MIR AIMAL KANSI for the charge of CAPITAL MURDER, 1ST DEGREE MURDER, MALICIOUS WOUNDING, MALICIOUS WOUNDING, MALICIOUS WOUNDING, USE/DISP FIERARM IN A FELONY, USE/DISP FIERARM IN A FELONY, USE/DISP FIREARM IN A FELONY, USE/DISP FIREARM IN A FELONY, USE/DISP FIREARM IN A FELONY, a copy of which is attached.

The Grand Jurors did return a true bill against MIR AIMAL KANSI, for the charge of CAPITAL MURDER, 1ST DEGREE MURDER, MALICIOUS WOUNDING, MALICIOUS WOUNDING, MALICIOUS WOUNDING, USE/DISP FIERARM IN A FELONY, USE/DISP FIERARM IN A FELONY, USE/DISP FIREARM IN A FELONY, USE/DISP FIREARM IN A FELONY, USE/DISP FIREARM IN A FELONY.

Therefore, in the name of the Commonwealth of Virginia, I command you to apprehend MIR AIMAL KANSI and bring him before the Judge of our Circuit Court of Fairfax County, Virginia,

FORTHWITH, to answer the indictment and to be further dealt with according to the law.

You are ORDERED to file a return reflecting how you have executed this Bench Warrant.

Given under my hand and seal of this Court on the 17th Day of February, 1993.

DEFENDANT TO BE HELD WITHOUT BOND UNTIL SET BY THE CIRCUIT COURT.

Trial date to be set by the Circuit Court.

s/_____

JUDGE J.HOWE BROWN

(EXECUTE AND RETURN THE ORIGINAL)

Executed this 17th day of June, 1997.

By: s/ Richard J. Cline #1787

Fairfax County Police

A COPY TESTE:

JOHN T. FREY, CLERK

By:_____

Deputy Clerk

Original retained in the office of

The Clerk of the Circuit Court of

Fairfax County, Virginia.

APPENDIX KK

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	:
-vs-	: CRIMINAL
	: CASE
	: NO. 79148
MIR AIMAL KASI, aka	:
MIR AIMAL KANSI	:
DEFENDANT	:

FAIRFAX COUNTY JUDICIAL CENTER

COURTROOM 5E

NOVEMBER 11, 1997

The above-entitled matter came on to be heard, with a Jury, before the HONORABLE J. HOWE BROWN, Judge, in and for the Circuit Court of Fairfax County, in the Courthouse, 4110 Chain Bridge Road, Fairfax, Virginia, beginning 9:04 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth:

Robert F. Horan, Junior Esquire

Commonwealth's Attorney

Raymond Morrogh, Esquire

Deputy Commonwealth's Attorney

On Behalf of the Defendant:

Richard Goemann, Esquire

Frank Romano, Esquire

Crystal A. Meleen, Attorney at Law

Judith Barger, Attorney at Law

*****

CONTENTS

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JUDY DARLING	42	–	–	–
RAHEL E. NATHANIAL	60	83	–	–
FLORENCE ARTHUR	90	96	–	–
SARFRAZ FAZALDIN	98	105	108	–
KHAN ASGHAR	110	115	–	–
NASIR ESHAI	117	121	–	–
CHRISTIAN MARCHETTI	125	132	–	–
LISA JOHNSON	136	140	–	–
LOUISA GILL	145	–	–	–
AMANULLAH KASI	151	173	181	–
MARY HANSHAW	185	192	–	–
ASAAD MOHAMMED	194	199	–	–
MIRWAIS KASI	203	225	227	–

EXHIBITS

	FOR IDENTIFICATION	IN EVIDENCE
COMMONWEALTH'S EXHIBIT NO. 48	PAGE 40	PAGE 40
COMMONWEALTH'S EXHIBIT NO. 49 --		PAGE 193
DEFENSE EXHIBIT NO. 1 --		PAGE 67
DEFENSE EXHIBIT NO. 2 --		PAGE 67
DEFENSE EXHIBIT NO. 3 --		PAGE 72
DEFENSE EXHIBIT NO. 4 --		PAGE 72
DEFENSE EXHIBIT NO. 5 --		PAGE 78
DEFENSE EXHIBIT NO. 6 --		PAGE 113
DEFENSE EXHIBIT NO. 7 --		PAGE 113
DEFENSE EXHIBIT NO. 8 --		PAGE 212
DEFENSE EXHIBIT NO. 10 --		PAGE 208
DEFENSE EXHIBIT NO. 12 --		PAGE 157
DEFENSE EXHIBIT NO. 13 --		PAGE 208
DEFENSE EXHIBIT NO. 14 --		PAGE 208
DEFENSE EXHIBIT NO. 15 --		PAGE 208
DEFENSE EXHIBIT NO. 16 --		PAGE 208
DEFENSE EXHIBIT NO. 17 --		PAGE 208
DEFENSE EXHIBIT NO. 18 --		PAGE 208
DEFENSE EXHIBIT NO. 19 --		PAGE 208
DEFENSE EXHIBIT NO. 20 --		PAGE 208

DEFENSE EXHIBIT NO. 21 --		PAGE 162
DEFENSE EXHIBIT NO. 25	PAGE 127	PAGE 128

DEFENSE EXHIBIT NO. 26 PAGE 188 PAGE 191
DEFENSE EXHIBIT NO. 27 PAGE 188 PAGE 191
DEFENSE EXHIBIT NO. 28 PAGE 188 PAGE 191
DEFENSE EXHIBIT NO. 29 PAGE 188 PAGE 191
DEFENSE EXHIBIT NO. 30A-B PAGE 189 --

MR. GOEMANN: The next witness, Your Honor, is

Mirwais Kasi.

May we have the Interpreter come forward. He would like to testify in English, but if he has any trouble, I've asked the Interpreter to stand by.

THE COURT: All right.

Whereupon,

ZEEBA SALEEM,

the Interpreter, was called by counsel for the Defendant to translate the testimony of the Witness, and, having first been duly sworn by the Clerk of the Court, translated the testimony of the Witness as follows:

Whereupon,

MIRWAIS KASI

a Witness, was called for examination by counsel on behalf of the Defendant, and, having first been duly sworn by the Clerk of the Court, was examined and testified through the above-named Interpreter as follows:

DIRECT EXAMINATION

BY MR. GOEMANN:

Q Sir, could you please tell the ladies and gentleman of the jury, your name and spell it for the court reporter.

A Mirwais Kasi; M-I-R-W-A-I-S K-A-S-I.

Q Where do you live?
A In Quetta, Pakistan.
Q Have you lived there all of your life?
A Yes.
Q What is your relationship to Mir Aimal Kasi?
A He's my brother.
Q What's the difference in your ages?
A Two years.
Q Now, has the City of Quetta -- has the physical surroundings, the buildings and the structures in Quetta changed much in the last ten years?
A No, not that much.
MR. GOEMANN: Your Honor, may I approach the witness?
THE COURT: Yes.
BY MR. GOEMANN:
Q Sir, I'm showing you what has been marked as Defense Exhibits 10, 13, 14, 15, 16, 17, 18, 19, and 20.
Would you just look through those and tell me when you're done.
A This is --
Q Do all the pictures show parts of Quetta?
A Yes.

Q You said you have lived there all of your life, right?

A Yes.

Q Do those pictures show fairly typical kinds of areas of Quetta?

A Yes, they do.

Q Is there anything particularly unique in any of the pictures?

A No.

Q Do the pictures fairly show Quetta as it was when Aimal was growing up?

A A little bit of changes of some buildings.

Q But, for the most part, it is the same?

A Yes.

MR. GOEMANN: Your Honor, I'd move those photographs into evidence.

THE COURT: May I see them; and is there an objection?

MR. HORAN: I don't know which ones he's actually offered. He's skipped from 10 to something else. Your Honor, I object on the grounds of relevance certainly.

There are pictures in there that clearly could

have been taken in the sixties. They have vehicles from the eighties in them.

Numbers 14, Number 19, Number 20, Number 16.

MR. GOEMANN: Your Honor, I never represented that they were taken in the sixties.

THE COURT: I think you all ought to come up here, so I can talk to you. Without looking at them, I don't know what they're -- there's a whole lot of different pictures.

TAKEN AT THE BENCH

THE COURT: I mean, what is 15 offered for?

MR. GOEMANN: Your Honor, all the pictures --

THE COURT: You don't have to keep it down. I'm just having you up here, because -- so we could look at the pictures.

MR. GOEMANN: All of the -- Mr. Kasi was raised in a culture very different than the United States and all the pictures are to show are to give an idea to the jury of how the town was like where he grew up in and what life like and the vast majority are just physical surroundings.

I certainly didn't mean to imply that they were taken in the sixties, but things have changed very

little in time. The fact is --

THE COURT: Well, I suspect that these (indicating) show that without -- what's the word when you put an automobile in the --

MR. GOEMANN: Anachronism?

THE COURT: Anachronism. And I'm -- I mean I'm not sure that these add anything and they are anachronistic and I don't know what that's (indicating) for.

MR. GOEMANN: Your Honor, I can elicit more testimony from this witness. These (indicating) are police officers and it's very typical for many years that the officers carry weapons like this (indicating).

THE COURT: I sustain the objection at this point for the purpose that you've offered so far as to 10.

And tell me why you need that (indicating) collection with the other collection; tell me what is unique about any of those that are the automobile's anachronistic points that Mr. Horan's talking about.

MR. GOEMANN: Your Honor, if that's the objection to it, I have no problem withdrawing these.

MR. HORAN: If you are going to allow those in, I withdraw any objection to any of them.

THE COURT: Say that again.

MR. HORAN: If you are going to allow those in, which show a very stilted picture of Pakistan, then I think -- and that's probably Pakistan today -- then I have no objection to the other ones coming in.

THE COURT: Okay, I'll let them all in so we'll get them all.

OPEN COURT

THE COURT: Including 10?

MR. HORAN: Including 10, Judge.

THE COURT: So we have admitted 10, 18, 17, 13, 16, 15, 14, 19, 20, and some of them have cars in it that are not yesterday's cars.

(The documents heretofore marked Defendant's Exhibit Nos. 10, 13, 14, 15, 16, 17, 18, 19, 20 for identification, were received in evidence.)

MR. HORAN: Your Honor, I wonder, could we at least -- someone knows when those pictures were taken. Could we at least have evidence of when they were taken?

MR. GOEMANN: Your Honor, I could not provide a witness right now, but we can certainly provide a

witness to say when they were taken.

MR. HORAN: I'll stipulate to it probably, if you will tell me what year they were taken.

MR. GOEMANN: They were taken in 1997.

MR. HORAN: All right.

THE COURT: Agreed they were taken in 1997?

MR. HORAN: They were taken in 1997. I'll stipulate to that.

THE COURT: And the witness' testimony with regard to the similarity.

BY MR. GOEMANN:

Q Sir, let me show you specifically Defense Exhibit No. 2, in evidence.

THE COURT: I don't think any of them are marked --

MR. GOEMANN: 10, I'm sorry.

THE COURT: Oh, 10, okay.

BY MR. GOEMANN:

Q Can you tell the ladies and gentlemen of the jury what Picture 10 shows?

A These are police officers of Pakistan.

A Are they police officers that are commonly found in Quetta?

A Yes.

Q The photograph shows the police officers with firearms at their sides; is that correct?

A Yes.

Q Were those firearms commonly used by police in Quetta?

A Yes.

Q Had they been commonly used by police in Quetta for many years as far as you know?

A For the last many years.

MR. GOEMANN: Your Honor, may I publish this to the Jury -- actually, may I publish all of them?

THE COURT: Yes.

(Whereupon, the aforesaid documents were published to the Jury.)

MR. GOEMANN:

Q Does your family have a home in Pakistan?

A Yes.

Q Is that in Quetta?

A Yes.

Q And -- let me just show you.

(Mr. Goemann handed a photograph to the Witness.)

Let me show you what has been marked as Defense Exhibit 8, for identification.

Is that a portion of your home in Pakistan?

A Yes.

Q What, specifically, does it show?

A This is -- the upper portion is of my elder brother and the lower portion belongs to Aimal.

Q When you say "Portion," what are you saying; a portion of what?

A A portion of the house. The upper story -- the upper story is my elder brother and the lower story is Aimal.

Q You are referring to your brother?

A Yes.

Q When was that house built?

A In 1983.

MR. GOEMANN: Your Honor, I'd move this in, Defense Exhibit 8.

THE COURT: Any objection to Exhibit 8?

MR. HORAN: No objection, Your Honor.

THE COURT: No. 8 will be received.

(The document heretofore marked Defendant's Exhibit No. 8 for identification, was received in evidence.)

MR. GOEMANN: Your Honor, I would like to publish 8 and I never published 6 and 7; photographs that were already in evidence.

(Whereupon, the aforesaid documents were published to the Jury.)

THE COURT: All right.

BY MR. GOEMANN:

Q Sir, what religion do you practice?

A Islam.

Q Is that also your brother's religion?

A Yes.

Q What was your father's name?

A The late Abdulah John Kasi.

Q He has passed away?

A Yes.

Q And what are your brother's names?

A My elder brother Amanullah Kasi. The second one which is elder Naseeb Ullah Kasi. Then Mirwais Kasi and after me Aimal Kasi.

Q The three elder brothers; Amanullah, Naseeb Ullah and yourself, did they all have the same mother?

A Yes.

Q And what about Aimal?

A Aimal is my second mother's child.

Q How old where you when you first have a memory of Aimal?

A Could you say question again.

Q Thinking back to when you were a child, when -- how old are you when you first remember anything about Aimal?

A That time when I remember, I was thirteen and Aimal was eleven when I remember him.

Q That's the first memory you have of him?

A Yes.

Q Now, can you tell the members of the jury what his personality was like at that time?

A His personality; I could explain that he was when I ever have seen him at that stage, crying too much, and teasing his mother.

And something like that.

Q When you say, "Teasing his mother," what do you mean?

A He teasing means that "I want this and I want this," and if the mother told him no -- for example, a toy or something like that, he would cry, cry and sometimes he would grab her by the hair or so.

Q That's something you remember from when he was younger?

A Yes.

Q Was that behavior different from the behavior of the other children in the family as far as you can remember?

A Yes. This was different.

Q In what way was the crying different than the other members of the family. The other children?

A The duration of his crying was more than the other children.

Q Did he get along with everyone in his family?

A Pardon me?

Q Did he get along? Did he have a good relationship with the other members of the family at this time?

A Yes.

Q As Aimal got older through the teenage years did you notice any change in his personality?

A Well, after that stage he became a little bit quiet and serious. Not -- I mean to say not talkative.

Q He was not talkative?

A Yes.

Q When you say he wasn't talkative, are you talking about him in relation to other members of the family?

Was he talkative to other members of the family or not?

A He used to talk less. I mean to say that he didn't mix up. He didn't mix up like other children. Like other brother and sister.

He was a little bit -- only he talked to a little bit.

Q He stayed separate?

A He -- to some extent.

Q What about friends, did he have a lot of friends outside of the family?

A No. He had no friends as far as I have seen. I have no -- I have not seen his friends.

Q During these teenage years, what would he do with his free time?

A When he was in the teenager, the free time we

have and outside the house we have shops and in one of the shops he used to sit in his free time with that bicycle repairing shop.

Q Did you ever see him there?

A Many times, yes.

Q What would he be doing?

A He was sitting and seeing the road and chatting with that -- the shop keeper.

Q Do you know approximately how old -- or how much older the shopkeeper was than Aimal, at that time?

A Well, I would say that he's double the age of Aimal.

Q He was at least double the age?

A Yes, he was at least double the age.

Q Do you know, at this time, if Aimal had any hobbies or interests?

A No. As far as his hobbies are concerned, I have seen no hobbies.

Q Now, during these teenage years, did you notice Aimal starting to engage in any kind of unusual behavior?

A As he became older, one thing which I noted and I told that he became quite serious, not talkative

like others and one change which I noted in him was he started talking with himself.

Sometimes when he came from the outside his hands were in this position (indicating) that he's talking to someone.

Q You're sure -- your hands are moving in front of you?

A Not the both hands, but only the one hand (indicating).

Q One hand; gesturing?

A Yes, gesturing that he is talking to someone.

Q And would you see his mouth moving at that time?

A Yes.

Q Did you ever hear anything he said?

A No. He was far from me when he was coming from outside, far from me.

Q Were there any times when this behavior was == well, did you see this behavior in any particular kind of setting?

A Yes. When I saw him in his room also some time, went into his room and after awhile, if he was not that much talkative and after some time if he -- he --

sometimes he seems alone and at that time he shook his head and talking to himself.

Q Did you go to the room when you saw him doing that?

A Yes.

Q Was there ever anyone else in the room?

A No.

Q When you saw that kind of behavior, do you know if Aimal was taken to doctors as a result of that behavior?

A He was taken in the childhood, which I don't remember, and we talked that it might be the at the time when he was --

MR. HORAN: Your Honor, I object to this. This is pure speculation by this witness.

MR. GOEMANN: Your Honor, I'll rephrase the question.

THE COURT: I sustain the objection to what he said in that little bit and you can rephrase the question.

BY MR. GOEMANN:

Q Do you know that during these teenage years, if your brother was taken to any doctors for this behavior?

A During this -- it was not that because he was not harmful in doing like shaking his head and talking to -- that he is talking to someone.

It was not that harmful.

Q So nobody took him to a doctor?

A Yeah.

Q Did there come some time when Aimal left for the United States?

A Pardon me?

Q Did there come a time when Aimal left Quetta to go to the United States?

A Yes.

Q And where were you when he left?

A I was for business to Lahore.

Q Now, as between the brothers, how would you characterize your relationship with Aimal when compared with the other brothers' relationship with him?

A Equal relationship.

Q Were you fairly close to him growing up?

A Just as I told, he not that much talkative to be close to him. I was close with him, yes, I'd say.

Q You said that -- I'm sorry, where were you when he left for the United Sates?

A I was in Lahore.

Q When you left to go to Lahore, did you know that Aimal was going to be -- going to be leaving Quetta before you came back?

A No. Only I knew that he was leaving. I didn't know the dates when he would be leaving. When I was back from Lahore, he had already left for the United States.

Q You didn't know that he was going to leave during the time you were away?

A Yes.

Q Yes, you did know or no, you didn't know? I'm sorry.

A I didn't know the actual date that he would be leaving.

Q Did you ever have any contact with Aimal while he was in the United States?

A Sometimes he used to bring to the house.

Q Did you have any indication that anything was wrong with him?

A No, not any indication.

Q Was there a time when he came back to Pakistan?

A Yes. He came back to Pakistan.
Q Was that 1993?
A Yes, 1993.
Q And were you in Quetta when he arrived?
A Yes. I was in Quetta when he arrived.
Q Can you describe his behavior at the time he arrived?
A We have not noted anything in his behavior. He was just as in past, serious. He was little bit more serious than before we saw him about two, two and a half years ago.
Q By serious you are talking about him being quiet?
A Being quiet, yes.
Q How long was he home?
A He was about four to five days.
Q And did you -- did he tell you -- did there come a point when he left Quetta?
A Pardon me?
Q Did there come a time when he left your home again?
A Yes.
Q Did he tell you that he was leaving?

A No. Before when he came he told us that he had come for a vacation and he will be leaving within a couple of days.

So without informing us, he went away.

Q As you were growing up, did your family have any firearms in the house?

A Yes.

Q What were they?

A They were shotgun, a pistol, a licensed one of my father.

Q And did your father use those firearms?

A The shotgun was for hunting and the pistol for self, for house protection.

Q Did Aimal ever use any of those firearms as far as you know?

A No. It wasn't -- it was under lock and key.

Q Did he ever show any interest in going hunting?

A No.

Q Did he ever show any interest in using the guns at all?

A No. They were locked.

Q Now, after your father passed away, did you

and your brothers inherit his business?

A Yes.

Q How much of the business did each of the sons inherit?

A We are four brothers and one-fourth to each brother.

Q Including Aimal?

A Including Aimal, yes.

Q Are you and your brothers active in running that business?

A Yes, we are.

Q At some point, did you try to get Aimal involved in running the business with the other brothers?

A Yes.

Q Do you remember about old he was at that time?

A He was in his -- as far as I remember, he was in his twenty-three or twenty-four.

Q Early twenties sometime?

A Yeah.

Q Were you successful in helping him into the business with the other brothers?

A No. He at the first -- at the early stage he was -- after his college in the evening time he used to

help in our business.

And after that when he had his master degree he had not that much interest in the business.

Q You said that Aimal was raised in the Islamic religion as you were; is that right?

A Yes.

Q Do you know of him ever being particularly orthodox or fervent in his religious beliefs?

A Pardon me?

Q Do you know of him ever being particularly orthodox or strict in his religious beliefs?

A No.

Q Do you know of him ever being involved in political activities?

A No, not in any political activities.

Q Did you ever know of him being in a political rally or a demonstration or anything like that?

A No, not at all.

Q Did you ever know him to be violent, get into fights?

A No, not at all.

Q When -- Aimal's mother was the second wife of your father; is that correct?

A That's right, yes.
Q Is she currently living?
A No.
Q When did she pass away?
A In 1983.
Q Did Aimal ever tell you that he hated the United States?
A No.
Q During the time that he was -- that you all were in Pakistan, do you know of him ever getting arrested or in trouble with the law?
A There in Pakistan?
Q Yes.
A No, not in any case.
MR. GOEMANN: I have nothing else, Your Honor.
THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. HORAN:
Q Do you know where he has been for the last four and a half years before he got caught on this offense?
A No.
Q Was in contact with you at all during that

time?

A No.

Q The picture, Defense Exhibit No. 10, of the policemen in the street; do you recall that picture?

A Yes. I have been to it.

Q What city is that picture taken in?

A This is Quetta.

Q This is in Quetta?

A Yes.

Q Those are travel policemen?

A Those are official provided by the -- these are government officials.

Q Government officers?

A Government officers.

Q They're federal officers.

A Yes.

Q Do you also have travel police in Quetta?

A No.

Q What kind of weapons are those that those officers have?

A These we call Klanshonkoff.

Q That's a Russian assault rifle?

A I don't know that it's Russian or which one,

but we call it Klanshonkoff.

Q But the police carry assault rifles?

A Yes, they do carry.

Q Mr. Kasi, how old are you?

A I am thirty-five years.

Q Thirty-five.

A Yes .

Q Did I understand you to say that the first that you remember your brother is when he was eleven?

A When he was eleven, yes, and I was thirteen?

Q So you would have been fifteen and he would have been eleven?

A Eleven.

Q Didn't you live with him the first eleven years?

A But as far as my memory works, I remember him when he was eleven.

Q I see.

You don't remember his life before he was eleven?

A No.

Q And at eleven you thought he cried too much?

A Yes, he cried too much.

Q And he would make too many demands on his mother?

A Yes, that's right.

Q I take it you thought that behavior was unusual?

A Unusual the duration of his crying; as well as his grabbing the hair of his mother. That was unusual.

Q Then within a couple of years he stopped crying as much?

A Yes.

Q And he stopped making demands on his mother?

A That's right.

Q When was the first time you ever saw him talk to himself?

A When he was a teenage; when he came to the teenage.

Q Thirteen, fourteen, fifteen; what age?

A Seventeen or eighteen.

Q When you would see him talk to himself, did you ask him why he was talking to himself?

A Yeah. He would laugh, "No, I was not talking."

Q He told you he wasn't talking to himself?

A Yes, but he was.
Q Did you argue with him about it?
A I told him when I asked him, "Who are you talking to, what are you doing?" He would said, "Nothing. I was not talking."
Q Do you remember how many times this happened?
A Yes. This process was continuing on; this process was.
Q From the time he was eighteen --
A Yeah.
Q -- until what time?
A Till he left for the United States.
Q He left for the United States when he was twenty-eight?
A Yeah; twenty-seven or twenty-eight.
Q Twenty-seven or twenty-eight?
A Yeah.
Q Were you living with him at the time he left to come to America?
A Pardon me?
Q Were you living in the same home with him, same house with him when he left to come to America?
A Yes, we have -- just as we saw in the

pictures, we have different portions -- our portions are different. We eat and drink together in that house, but our portions are divided.

Each brother have his own portion.

Q And the picture that you showed of the house, that's just one portion of that house?

A Yes.

Q It's a very large house and other members of the family live in other portions of the house?

A That's right.

Q And do you know how many rooms there are in that house?

A We each -- in each portion we have four bedrooms, including dining, including drawing and all the whole portion is of each brother.

Q So four brothers have four sections of the same house?

A Each brother with -- living with his children.

Q Was your brother playing soccer when he was growing up? Did he play soccer?

A I don't know what this.

THE INTERPRETER: Football.

THE WITNESS: No. He had no interest in.

BY MR. HORAN:

Q He never played football?

A No.

Q Were you in college when he was?

A I was in the college, but he was two years back in the class. Two years due to the difference.

Q Did you also go to the University of Baluchistan?

A Yes.

Q Did you see him often while you were at the University?

A No. When he was admitted at that time, I had finished.

Q You left the University when he came in?

A Yeah.

Q Did you ever see him at the University?

A Yes, quite many times.

Q Did you ever see him at the University with an AK-47?

A No.

Q Were you aware that he was there with an AK-47?

A No. No.

Q He left Pakistan in 1991; is that right?
A Yes. In the early 1991.
Q Prior to the time he came to the United States all for brothers received a part of the business; is that right?
A Yes.
Q You each had one-quarter of the business?
A That's right.
Q And that business is banking, commerce; what kind of business is it?
A Oh, we have hotels. We have -- we do construction work. We have orchards; lands, agricultural lands.
Q So it is a very large business?
A Yes.
Q It's a very diversified business; isn't that right?
A Pardon me?
Q It's a very diversified business; there are a lot of different parts to it?
A That's right.
Q And he has a one-fourth share of that business?

A Yes.
Q When he left for the United States, did he continue to be paid for his share of that business?
A No. He only -- he got his due share.
Q He got his share before he --
A Left for the United States.
Q And who got his share?
A He by himself got his share.
Q And he was paid --
A He was paid, yes. He was paid by my elder brother and my uncle.
Q And do you know how much they paid him?
A In our currency it was at that time twenty-two lakhs and at that time the dollar was about -- I think twenty-two rubes a dollar, so at that time, one-hundred thousand dollars.
Q So as of today, he no longer has a share of the business?
A No, he do have one-fourth share his.
Q He still has it?
A Yes.
Q But he doesn't get paid anything for it?
A Pardon me?

Q He doesn't get paid any more?
A (No response.)
Q If the business makes money, does he get money?
A Yes.
Q And how much money does he get annually?
A It -- well, it depends on the business and we have a joint business so we have not calculated the amount because it is joint.
Q During the whole time that he was in the United States he wasn't entitled to a share of the business; is that right?
A Pardon?
Q During the whole time that he is in the United States he still has a share of that business?
A Yes.
Q Do you recall when it was that he came back from Pakistan to the United States?
A It was early -- the beginning of 1993.
Q February of 1993?
A I don't remember the date. That it was the end of January or the beginning of February.
Q But it was somewhere in that time period?

A Yes. In that period.
Q Late January, early February?
A Or early February, yes, sir.
Q Now, you said at that time, when he came back he was more serious when he came back?
A Yes.
Q How did you know he was more serious?
A More serious as he was in the past not talking extra, not mix up with others. The same position, but a little difference in it.
Not that much when he used to talk at first. The duration of the time period of talking. It was lesser than he left for the United States.
Q And he stayed in the home in Quetta?
A Yes.
Q The one we have the picture of?
A Yes. He stayed in that portion.
Q And that remained his home the whole time he was in the United States?
A It's still waiting for him.
Q He stayed in that home for a couple of days and then he left?
A That's right.

Q Did he tell you he was leaving before he left?
A No.
Q Just one day he was gone?
A Yes.
Q And that was in February of 1993?
A Yes.
Q Did you ever hear from him at all between February of 1993, and the time that he was arrested?
A No.
Q Did you make any attempt to contact him?
A We didn't know that where he is; whether he's alive or not. After this incident which took place -- after the incident?
Q Yes.
A We didn't knew about him.
Q You didn't know where he was?
A Yes, that's right.
Q When was the next time you saw him after he left Quetta in '93?
A When I came here I had meeting with him in the Detention Center.
Q That would have been the next time?
A Yeah. That's the next time.

MR. HORAN: I have no further questions, Your Honor.

THE COURT: Anything on redirect?

MR. GOEMANN: Just a couple, Your Honor. Can I see Defense Exhibit 8?

(The Clerk of the Court handed the exhibit to Mr. Goemann.)

REDIRECT EXAMINATION

BY MR. GOEMANN:

Q Sir, showing you once again Defense Exhibit 8. That is a part of the family house; is that correct?

A Yes, it is.

Q When you talk about a portion, what -- how much of this house is an individual portion?

A You --

Q Let's turn it around and show the ladies and gentlemen of the jury.

A These stairs (indicating) going -- the stairs are going up to the upper portion of our elder brother and here (indicating) the downward steps, these are going to Aimal's portion.

Q Is it divided -- the upstairs and downstairs are two portions?

A Yes, they are separate. The entrance is separate. His entrance is separate and my elder brother's entrance is separate.

Q Where do you and your fourth brother live?

A We live on this side (indicating). The same as you see in this left hand (indicating) -- the same two portions on the right hand.

In the middle, we have a great garden and on the right side we have two portions consisting of the same two portions of my two brothers; I and my other brother.

Q So one of you lives on the downstairs and one on the upstairs in a house similar to that?

A That's right, yes.

Q Now, you said that Aimal still had a portion of the business while he was in the United States; is that right?

A Yes.

Q During that time period, were profits generated from the business that went to the brothers?

A No, just as I told before, we are joint family and joint family we -- whatever comes from the outside at that time we -- we, you know -- we share in the -- our father's business.

Q You put the money back in the business?

A In the business.

Q So, were any profits from that business ever sent to Aimal in the United States?

A No. He was not sent anything.

MR. GOEMANN: That's all, Your Honor.

THE COURT: May he be excused?

MR. GOEMANN: Yes, Your Honor.

THE COURT: You are excused and free to go or stay, as you wish. thank you.

(The Witness was excused.)

THE COURT: I suggest it is about time to go home. We are going to break for the evening.

APPENDIX LL

WASHINGTON POST

JUNE 18, 1997, Page A1

Suspect In CIA Slayings Is Returned To U.S.

Pakistani to Be Arraigned in Fairfax Today in '93 Shootings

By Robert O'Harrow, Jr.

Washington Post Staff Writer

Mir Aimal Kansi, the Pakistani native accused of killing two CIA employees and wounding three other people in a 1993 assault rifle attach outside the spy agency's Langley headquarters, has been captured and was returned on the United States last night, officials said.

FBI and CIA agents, working in a covert operation with the help of several Afghans, apparently lured Kansi out of hiding and took him into custody over the weekend near the border between Pakistan and Afghanistan according to sources familiar with the case.

An FBI official praised CIA efforts to set up the apprehension saying "This was people who get their hands dirty. Those guys busted their humps on this. They're doing what they do best."

Kansi, 33, was flown to the United States under extraordinary security on a military aircraft. He arrived at Dulles International Airport and was then transported by helicopter at 8:50 p.m. to the Fairfax County jail where sharpshooters kept watch from nearby rooftops.

He was taken into the jail in a police van. Sheriff's officials immediately began interviewing him to determine whether he was a suicide risk. Officials said Kansi would be held in

isolation for security reasons. "He's a very difficult custody issue," said Chief Deputy Sheriff James A. Vickery. "He's obviously a flight risk."

Kansi is scheduled to appear at 10 a.m. today in Fairfax Circuit Court, where he will be arraigned on two counts of capital murder, three counts of maiming and five counts of using a firearm in the commission of a felony. If convicted, he could receive the death penalty. The FBI arrested him on a federal warrant charging unlawful flight to avoid prosecution.

"We considered it a terrorist attach from the time it happened", Fairfax Commonwealth's Attorney Robert F. Horan Jr., who will prose-

See KANSI A10 Col. 3

Picture of Kansi: At left, Mir Aimal Kansi (with beard) is led to a van after arriving by helicopter at the Fairfax jail. He allegedly killed two CIA workers and wounded three other people.

Picture of Kansi: Above: a "wanted" poster shown Kansi, who was captured over the weekend near the border between Pakistan and Afghanistan by federal agents with the aid of Afghans.

Washington Post

July 18, 1997, Page A10

Suspect in Slayings Outside CIA Headquarters Is Returned to U.S.

Kansi from A1

cute the case, said at a news conference last night.

Several foreign governments and operatives played critical roles in moving Kansi into U.S. custody, officials said. They declined to say whether the CIA paid informants for the information they used to track him down or exactly how he was captured. The State Department had posted a $2 million reward for information on Kasi.

"It was decided at the highest levels of government that we will not reveal how he came into custody" one official said. Another official added, "It literally worked like clockwork".

Kansi is accused of opening fire with a Chinese-made AK-47 type assault weapon in CIA employees and others waiting in their cars at a stoplight outside CIA headquarters on Jan. 25, 1993. All but one of the five victims were CIA employees.

Family members of several of the victims said they were happy that Kansi has finally been brought to justice.

Andrew Bennett, the son of slain CIA analyst Lansing Bennett, 66, had been unaware of Kansi's arrest until a reporter reached him by phone last night at his home in Nantucket, Mass. "That's fantastic" Bennett exclaimed, "I just thought he would never be found. I'm shocked. I'm shaking."

Lansing Bennett's second wife, Inga of Reston, was walking her dog yesterday morning when the news came from the

CIA. She said that although the news of Kansi's arrest brings some relief, nothing can compensate her for her loss. "My husband is still dead," said Bennett, 50, "That's a permanent loss _____. Kansi's arrest doesn't bring this wonderful _____.

Bennett said that she was still waiting for details on how Kansi was captured and that she was eager to learn a motive for the attach, "Maybe we'll never know. Maybe like Timothy McVeigh, he will choose not to speak," she said, referring to the man convicted in the 1995 bombing of a federal building in Oklahoma City.

CIA employee Frank Darling, 28, also was killed in the attack. Two other CIA workers and another man sitting in his car were wounded.

Nicholas Starr, 65, a CIA employee was shot twice during the incident and has limited use of his left arm. He said he is pleased that Kansi will finally have to account for his actions.

"His being caught will not change my life. It won't bring back my arm, and it will not change the lives of anyone else who was affected," he said when reached at his Oakton home last night. "Still, we Americans hate to see people get away with murder."

Federal officials were jubilant about Kansi's apprehension yesterday, saying it brings to a close a wrenching case that underscored the nation's vulnerability to such attacks. Officials have said they believe Kansi acted alone.

At the time, Kansi's Reston roommate told police that shortly before the shootings, Kansi said that shortly before the shootings, Kansi had said that he was unhappy about the treatment of Muslims in Bosnia and that he wanted to "make a big

statement" by shooting up the CIA, the White House or the Israeli Embassy. Last night, officials played down that statement as a motive. Horan declined to say whether the roommate is still living in the United States.

Acting CIA Director George J. Tenet said Kansi's arrest "marks a clear triumph of good over evil."

"Today's developments in no way lessen the pain of those wounded on Jan. 25, 1993, nor the despair experienced by the families who lost a loved one, but it is my sincere hope that seeing Kansi brought to justice will provide some small solace." Tenet said. "We have always kept the faith and never wavered in our commitment to find the individual charged with this attack,"

Kansi's apprehension required a sensitive and complex covert law enforcement and counterterrorism operation that took "several days to complete" a senior Justice Department official said last night. The arrest involved a combination of sources developed by the FBI and CIA, officials said.

Kansi's arrest had been complicate by the fact that he has deep family ties to tribes that move among the rugged mountains along the Pakistani border. One assault on a complex where Kansi was suspected of hiding came up short. Other tips yielded few results.

Two years ago, Kansi was believed to have traveled from Karachi, Pakistan, though Baluchistan to Afghanistan, officials said. The CIA and FBI have been working for several years with several Afghan groups in anti-drug and anti-crime operations in that part of the world, and it was one of those groups that picked up Kansi, according to an administrative official.

This time, officials said, CIA agents made fruitful use of intelligence channels among several Afghans. Officials suggested that the agents created a ruse that drew Kansi out of hiding and put him off guard. Then FBI agents took him into custody, sources said.

An FBI team headed by Jimmy C. Carter, who oversees the Washington field office's criminal division, flew out of the country to pick up Kansi in the last several days, officials said. The team included the case agent who had been pursuing the Kansi investigation, a special hostage rescue unit based in Quantico and the "C-4" squad, a violent crime unit operating out of the Washington field office.

Kansi, a well-educated man who has a master's degree, arrived in the United States through New York's John F. Kennedy International Airport in 1991. He moved to Reston and slept on the apartment floor of another Pakistani immigrant, whom he knew through friends from his hometown of Quetta, Pakistan.

Over the next two years, Kansi lived in at least four homes in Loudoun and Fairfax counties, including his last residence in Reston with yet another Pakistani acquaintance. He worked for a couple of moving companies and a courier service.

In January 1993, Kansi apparently began preparing for the violent act officials said. From Jan. 10 to Jan. 22 he visited David Condon Guns in Chantilly four times to choose and then buy ammunition, two handguns, and a Colt AR-15 assault rifle, which he then exchanged for another AK-47 type rifle. He also bought a bullet-proof vest.

Shortly before 8 a.m. on Jan. 25, as commuters waited in the left-turn lanes on Dolley Madison Boulevard leading into the

CIA complex a man, who police say was Kansi jumped from a car. With an assault rifle in his hands, he walked between card methodically pulling the trigger.

Later that afternoon, Kansi bought a one-way plane ticket to Pakistan for $740 in cash from a store in Herndon. The next day, Kansi, wearing a sweater and slacks and carrying no luggage, traveled to National Airport and flew out of the area, according to law enforcement officials. He then caught a connecting flight out of the country.

Starr, one of the shooting victims, has kept a wanted poster of Kansi on his piano. He said the poster, a gift from a friend who works for the U.S. Postal Service was an "ironic" gesture. Now, he said, he hopes that Kansi will get what he deserves.

"I don't feel vindictive toward him," said Starr, who added that he has interest in attending Kansi's trial. "My hope is for justice."

Staff writers, Patricia Davis, Michael Dobbs, Wendy Melillo, Davis B. Ottaway, Walter Pincus, Leef Smith, and Pierre Thomas, contributed to this report.

SIDE BAR ARTICLE ON PAGE A10

CHRONOLOGY WITH MAP

MIR AIMAL KANSI CAPTURED

A four-year search for CIA shooting suspect Mir Aimal Kansi ended when a group of Afghans turned him over to U.S. officials, who flew him back to the United States yesterday for trial on capital murder charges.

Jan. 25, 1993: A man wielding an assault rifle emerges from a car and fires at other autos at a stoplight outside CIA headquarters in

Langley. Frank Darling, 28, and Lansing Bennett, 66, both CIA employees, are killed. Three others are seriously injured.

Jan. 26: Mir Aimal Kansi, a Pakistani national living in Reston, flees the United States and returns to his home city, Quetta, in Pakistan.

Feb. 10: Kansi is charged with the attack after an AK-47 type rifle and other evidence pointing to his involvement are found in his apartment.

Feb. 7, 1995: Ramzi Ahmed Yousef, suspected of building the bomb that detonated at the World Trade Center, is arrested in Islamabad, Pakistan. A colleague had alerted U.S. and Pakistani authorities to his whereabouts, apparently hoping to collect a $2 million reward offered by the U.S. government.

Feb. 8: Yousef is extradited to the United States for trial in New York.

Feb. 18: The FBI puts Kansi on its 10 Most Wanted list.

Feb. 22: Sen. Arlen Specter (R-Pa) chairman of the Senate Intelligence committee, urges President Clinton to classify Kansi as an "international terrorist" and increase the reward for information leading to his arrest to $2 million, from $200,000. He also writes to Pakistani Prime Minister Benazir Bhutto asking for Pakistan's help in apprehending Kansi.

March 31: The FBI informs the State Department that it has determined that the attack outside CIA headquarters was "an act of international terrorism".

April: The State Department prepares a statement announcing a $2 million reward but does not release it.

June 16: Judy Becker-Darling, widow of Frank Darling, is informed by the State Department that the statement will not be

released and that a massive publicity campaign has been postponed indefinitely because of the deteriorating security situation in Pakistan and increased threats there to the lives of American diplomats.

Oct. 2: The State Department announces that the reward has been increased to $2 million.

Yesterday: The FBI announces that Kansi has been arrested abroad after being turned over to U.S. official by a group of Afghans. He is flown to Dulles International Airport.

Today: Kansi is scheduled to appear in Fairfax County Circuit Court for a hearing on charges of capital murder.

APPENDIX MM

ARTICLE IN WASHINGTON POST ON JUNE 19, 1997 ON PAGES A10, A11

2 Governments Cloak Details of the Capture

By Thomas W. Lippman

Washington Post Staff Writer

Judging from the public pronouncements of U.S. officials yesterday, the law enforcement triumph represented by the capture of CIA shooting suspect Mir Aimal Kansi, did not occur in any particular place. It just happened in disembodies space somewhere.

In reality, Kansi was nabbed in Pakistan, according to a number of indications including an account by a U.S. official speaking on condition of anonymity. But that fact did not emerge from any formal statements or briefings here or in Islamabad. The two governments made a pact not to revel details of the operation, especially not where it occurred.

Accordingly to law enforcement sources and specialists in South Asian affairs, that caution is understandable for two reasons.

First, both countries naturally want to avoid disclosure of information that would reveal how they learned Kansi's whereabouts. They wanted in part to protect the people who handed him over from possible vengeance of his kinsmen in the remote Pakistan-Afghanistan border area.

Second, it is a matter of considerable political sensitivity in Muslim Pakistan to allow delivery of one of its citizens into the hands of the United States. Pakistan and the United States were close allies during the Cold War when Pakistan was Washington's instrument for building up the armed resistance to Soviet troops in

Afghanistan, but many Pakistanis feel the United States abandoned them when their country was no longer useful.

Relations between the two countries have varied from warm to chilly over the past few years. Washington developed a list of grievances against Pakistan and Pakistan sought to regain Washington's favor while pursuing its independent course on security issues including acquisition of missiles from China and continuation of its nuclear weapons program.

"One reason they would want to be helpful [with Kansi] is that there are a bunch of other issues on which we disagree, like the nukes and the missiles" said Michael Kreon, president of the Stimson Center here who watches Pakistan closely. "It's good to have some countervailing positives."

"All we are allowed to say is that we cannot comment on any specific incident, but we have been cooperating with the United States on international terrorism for some time," said Zamir Akram, a senior diplomat at Pakistan's embassy here.

Kansi is accused of the Jan. 25, 1993 shooting spree outside CIA headquarters in Langley that killed two agency employees and wounded three other people. He fled the United States and has long been believed to have returned to his native Baluchistan, a loosely governed region of Pakistan near the Afghan and Iranian borders where tribal leaders are the real government.

Pakistani governments are generally reluctant to take actions that stir animosity in that region but their caution was overridden in the Kansi case by the desire to improve with Washington. In June 1993, the Pakistani army raided the Kansi family compound, after FBI and CIA teams heard he was in the area.

At that time Kansi eluded capture and was later believed to have moved across the border into Afghanistan, where the United States recognizes no government. Specialists in the region's affairs said yesterday it was likely that Afghans or Pakistanis with no family ties to Kansi turned him in hoping to collect a $2 million reward offered by the State Department.

"Kansi got to an area where $2 million is worth more than clan loyalty, " said Robert Oakley, former U.S. ambassador to Pakistan.

Oakley and others also said Pakistan's ISI intelligence service which developed close ties with the CIA during the war in Afghanistan can be assumed to have helped track down Kansi.

But sources in Pakistan indicated the government there was reluctant to allow the arrest and permitted it only under U.S. pressure which State Department spokesman Nicholas Burns—without confirming that Pakistan was the target—indicated was intense.

"Since it was an American operation, we are in the dark," a Pakistani Interior Ministry official told Washington Post correspondent Kenneth Cooper.

Pakistan has been chafing for years under the impact of a U.S. law that cut off military aid and sales to Pakistan because the country refused to abandon its nuclear weapons program. Because of that law, Pakistan has been unable to take delivery of a fleet of F-16 warplanes for which it paid $658 million or to get back the money.

Partly to overcome the hostility in Congress, Pakistan has cooperated on some major law enforcement cases including the February, 1995 capture of World Trade Center bombing suspect

Ramzi Yousef. But U.S. officials are unhappy that no one has been arrested in the March 1995 slaying of two employees of the U.S. Consulate in Karachi.

Staff writer Walter Pincus contributed to this report.

Planning the final phase of the operation, Carter and his team decided to make the arrest late at night. That would ensure as much secrecy as possible and it was hoped, give them the element of surprise.

"This was the kind of place that any stranger would be noticed in immediately," Carter said.

Shortly before 4 a.m. Sunday, Carter and the team drove their four-wheel drive vehicle near the hotel. Seconds later, the team led by Carter and Garrett moved up the stairs.

Then they knocked on Kansi's door.

"He looked very surprised," Carter said. "But we were waking him up in the middle of the night."

Within seconds, Kansi was on the floor, and in handcuffs. After he swore briefly, Carter and the agents told him to be quiet. Aware of the guns and the agents' intent, he obliged. After confirming Kansi's identification, the agents left his room within 10 minutes.

But the arrest was only part of the job. Now they had to get him back to the United States. Traveling discreetly, the agents spent a little more than a day moving Kansi toward a location they decline to disclose. Kansi by this time "was comfortable and chatty," Carter said.

A senior FBI official said yesterday that Kansi was in the custody of the FBI arrest team throughout this period and that no foreign law enforcement officers ever had charge of him.

Details were sketchy but Pakistani sources said that Kansi departed their country through a section of the Islamabad airport controlled by the Pakistani air force.

Sometime Monday agents reached their destination: a gigantic C-141 Starlifter airplane 168 feet in length, painted in camouflage colors with a U.S. flag on its rear wing. The military officials on board had no idea who they were transporting "and they didn't ask." Carter said.

A short while later, Pickard who was traveling home from a visit in New York to visit his parents for Father's day, received an electronic page from FBI headquarters.

"They said the package had been delivered," Pickard said.

As the engines roared and the plane taxied toward the runway, Carter, who had celebrated his birthday during the operation, finally began to relax. "It was the best looking taxi I'd ever seen in my life," he said. "You knew you were going home."

Staff writers Kenneth J. Cooper in New Delhi and Peter Baker contributed to this report.

APPENDIX NN

Article in Washington Post on June 19, 1997

Pages A12, A13

SUSPECT'S MOVES, MOTIVE REMAIN MYSTERIOUS

KANSI LEFT LIFE OF PRIVILEGE TO MOVE TO U.S.

Kansi is part of a politically powerful family.

By David B. Ottaway

Washington Post Staff Writer

Mir Aimal Kansi, charged with murdering two CIA employees, comes from a wealthy, landowning family in rugged western Pakistan, where he led a life of relative affluence and leisure before abruptly moving to the Untied States in February 1991 as an illegal immigrant and drifter.

U.S. law enforcement officials hope that their interrogations of Kansi, who was returned to the United States Tuesday night after his capture, will resolve a four-year mystery: why this privileged young man spurned a silver-spoon birthright and a promising career at home to allegedly commit what the FBI has described as "an act of international terrorism in the assault-rifle attack outside CIA headquarters in 1993.

Now 33, Kansi is part of a politically powerful family from the Pashtun tribe in Quetta, Pakistan. According to interviews with family members, friends and part associates, the Kansi family owns an entire downtown block and two hotels, as well as various businesses and orchards outside the provincial capital of Baluchistan which borders Afghanistan.

Kansi attended the city's best private schools before going to the University of Baluchistan, where he majored in English literature. When his father died in 1989, the same year Kansi

graduated from the university, he inherited $100,000 in cash and much of his father's real estate and business ventures, friends and family members.

How Kansi wound up adrift in the United States less than two years later, allegedly plotting a murderous attack, appears to remain a mystery, even to his family. One theory holds that Kansi bore a grudge against the CIA as a result of his family's alleged involvement in smuggling U.S. provided arms to rebels fighting to drive Soviet troops out of Afghanistan in the 1980's.

Some press accounts have alleged that Kansi's father, Abdullah Kansi worked for the CIA and helped the agency in its covert gun-running operation. Quetta was one of the main staging areas for arms delivered to the Afghan rebels. After Malik Gul Hasan Kansi, a relative of the accused killer, was mysteriously shot to death in Quetta in June 1984, local reports subsequently speculated that he might have been assassinated by CIA agents for reasons connected to the Afghan operation. Those arms deliveries began in earnest in 1985. The killers were never apprehended.

The CIA, after conducting what it says was a thorough internal review, had denied that any member of the Kansi family had agency connections.

According to some media accounts, several members of the Kansi family actually worked for Pakistan's Inter-Services Intelligence (ISI), the agency the CIA relied upon to help transport and distribute arms to the Afghan rebels.

Kansi grew up at a time when the joint U.S.-Pakistani operation against the Soviet occupation in Afghanistan was in full swing and his fellow Pashtun tribesmen—who make up the majority in Afghanistan—were involved in a bloody, escalating

was against Moscow. Many Pashtun, however, supported the Soviet-backed communist regime in Kabul.

The search for explanations of Kansi's actions have led the CIA, FBI and various journalists to examine his background for clues to a possible anti-American streak.

A reporter for the New Yorker magazine, Mary Anne Weaver, discovered during a visit to Quetta in 1995, that Kansi, at the age of 8, had fought with one of his teachers and then burned down the school with the help of family servants. He apparently was never punished for the misdeed.

Other reports say Kansi, while a university student, became swept up in a Pashtun nationalist movement, which had a distinctly anti-American aspect to it. The Pakistani government sought to suppress the movement at a time when the United States was Pakistan's closest ally. On several occasions, Kansi reportedly participated in demonstrations where the U.S. flag was burned and "Death to America" placards were used.

But most accounts do not portray Kansi as a political firebrand during his youth. Based on interviews with Kansi's family, friends, and former schoolmates in 1993, two Washington Post reporters found him to have been a mostly apathetic student who was usually shy and somewhat naive, but also subject to occasional aggressive outbursts. He sometimes resorted to threats and intimidation to try to get higher school grades, according to his university teachers. He also took to carrying anAK-47 automatic rifle to school after the anti-communist rebellion broke out in Afghanistan in 1990.

Family members said Kansi's father's death in 1989 from a heart attach, just as he was graduated from university at the age

of 25, had a deeply emotional impact on him although the full repercussions of the event remain unclear. The following year, Kansi went to Germany for reasons his family and friends in Quetta never understood, and stayed there for several months. He returned to Quetta in late 1990, only to leave again the following February for the United States.

Kansi skipped through U.S. Customs, evidently without being questioned by immigration officials. He remained in the country illegally until February 1992, when he was discovered and quickly applied for political asylum. Kansi was allowed to stay under a general immigration amnesty and received a work visa.